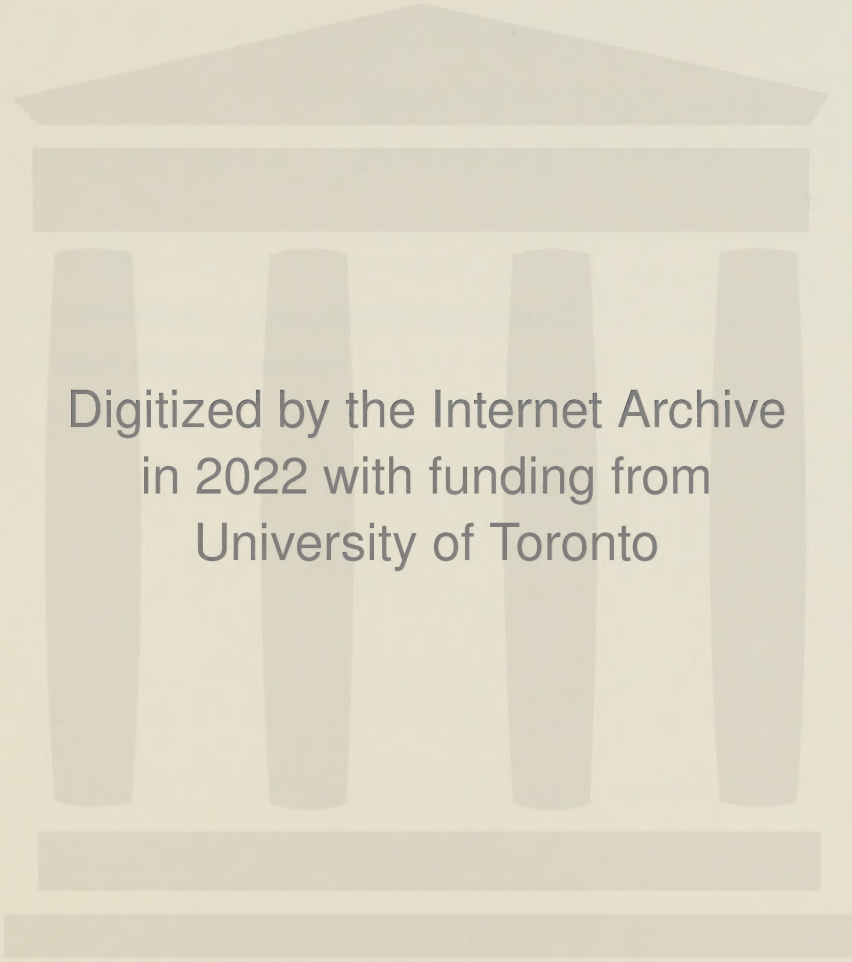

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

LOAN AND TRUST CORPORATIONS ACT

MONDAY, MAY 11, 1987

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

CHAIRMAN: Cooke, D. R. (Kitchener L)
VICE-CHAIRMAN: Ferraro, R. E. (Wellington South L)
Ashe, G. L. (Durham West PC)
Cordiano, J. (Downsview L)
Haggerty, R. (Erie L)
Mackenzie, R. W. (Hamilton East NDP)
McFadden, D. J. (Eglinton PC)
Morin-Strom, K. (Sault Ste. Marie NDP)
Ramsay, D. (Timiskaming L)
Stephenson, B. M. (York Mills PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:
Epp, H. A. (Waterloo North L) for Mr. Cordiano
Jackson, C. (Burlington South PC) for Mr. Ashe
Partington, P. (Brock PC) for Miss Stephenson

Clerk: Carrozza, F.

Staff:
Revell, D. L., Legislative Counsel
Schuh, C., Legislative Counsel
Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Financial Institutions:
Kwinter, Hon. M., Minister of Consumer and Commercial Relations and Minister of Financial Institutions (Wilson Heights L)
Parrish, C., Director, Policy and Planning Branch
Reid, D. J. M., Director, Loan and Trust Corporations Branch

ERRATUM

No.	Page	Line	Should read:
F-52	F-15	14	Mr. Clarkson: The Bank Act says that it is non-arm's-length.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Monday, May 11, 1987

The committee met at 3:53 p.m. in committee room 1.

ORGANIZATION

Clerk of the Committee: There is a quorum. Honourable members, it is my duty to inform you that you must elect a chairman. May I have a nomination?

Mr. Ferraro: I move David R. Cooke as chairman.

Clerk of the Committee: Are there any other nominations? There being no other nominations, I declare David R. Cooke chairman of the committee. Will you please take the chair?

Mr. Chairman: Thank you very much for your overwhelming vote of confidence. We now have to elect a vice-chairman.

Mr. Epp: I will nominate Mr. Ferraro.

Mr. Chairman: Are there further nominations? I declare Mr. Ferraro vice-chairman.

We now need a motion to transcribe committee meetings.

Mr. Haggerty moves that unless otherwise ordered, transcripts be made of all committee meetings.

Mr. McFadden: May I ask a question? If we did not pass that motion, what would be the impact? I thought we made transcripts of all committee hearings.

Clerk of the Committee: Can I clarify that? Hansard is made only of estimates and only copies of the voice programs are made for the other committee work. Unless we move that motion, we cannot have the transcripts, the rough copies.

Mr. Chairman: All those in favour of Mr. Haggerty's motion? All those oppposed?

Motion agreed to.

LOAN AND TRUST CORPORATIONS ACT
(continued)

Consideration of Bill 116, An Act to revise the Loan and Trust Corporations Act.

Mr. Chairman: We move to the historic consideration of what I understand to be the longest bill in the history of the provincial Legislature, Bill 116. In preparation, I remind the members of the committee of the motion that was passed April 8. I will read from the minutes of the proceedings of April 8, 1987: "The committee discussed its schedule relating

to Bill 116, and after some debate, Mr. Ferraro moved that the standing committee on finance and economic affairs take up and consider Bill 116 as reprinted"--that is, reprinted by the ministry--"to show amendments proposed by the Minister of Financial Institutions in lieu of considering Bill 116 as originally printed," which was how it came out of second reading.

The effect of this motion is to have the reprinted bill form the basis of discussion and clause-by-clause review. However, we would still proceed to consider the bill clause by clause and vote on each section. Members would still have full opportunity to debate any section that concerned them and to move amendments or to vote against that particular aspect of the bill. This motion would expedite consideration of Bill 116 without in any way decreasing the opportunity to explore any issue that members choose to explore.

The result is that we will be dealing with this document, Bill 116, which is marked at the bottom, "Reprinted to show amendments proposed by the Minister of Financial Institutions." We have copies of this here. You should all have a copy with you.

As well, you have in front of you some further amendments, frontispieced by a letter to myself from the minister, which are in the form of government motions, as is usually the case. It might help to expedite matters if a motion took place to include those proposed motions in the consideration, so that what we are considering is the document with proposed amendments, as well as the enclosures to the letter of May 8 to me from the minister.

Mr. Ferraro: Shall I move an amendment to my original motion?

Mr. Chairman: Since that motion was passed, I think it should be a new motion but it would be a motion to that effect.

Mr. Ferraro moves that the committee consider Bill 116, including the new amendments from the government that were received May 11, 1987, in its entirety, not precluding individual queries on any individual clause.

Is there any discussion? All those in favour of Mr. Ferraro's motion?

Motion agreed to.

Mr. Ferraro: On a point of order, Mr. Chairman: Would you clarify for me the position I have as the mover if I wish to propose an amendment or two or three?

Mr. Chairman: I have discussed this with the clerk. He can correct me if I misunderstand, but it is my understanding that you would still be free in the course of the clause-by-clause consideration to move another amendment to the motion. Further, if I vacate the chair, you are free to take the chair and your motion will then stand in someone else's name for that period of time.

1600

Mr. Ferraro: Fine. Thank you.

Mr. Chairman: Any member of the committee may move any motions with regard to any clause as we move through clause-by-clause, including Mr. Ferraro, in whose name the umbrella motion stands.

Mr. McFadden: Do you want notice of any motions we are going to

make? We chatted about this the other day. Do you want that now?

Mr. Chairman: Yes, I would appreciate it. I think the members of the committee would appreciate knowing as soon as possible whether any members of the committee have other motions they wish to bring.

Mr. McFadden: Unfortunately, Mr. Ashe could not be here today. He is our critic on Financial Institutions. I reviewed this with him and I just want to notify you, Mr. Chairman, that we intend to move an amendment to subsection 89(2). We would change the number from one third to one half, so subsection 89(2) would read, "At least one half of the directors of provincial corporations shall be outside directors."

Mr. Chairman: All right. I wonder whether you could speak to the legislative draftsmen and then we could perhaps have that amendment prepared as quickly as possible.

The clerk is reminding me that this is a bilingual bill. It has been prepared in a bilingual way at this stage. It will be necessary for amendments to be prepared that way, so we will need as much lead time as we can get.

Mr. Ferraro: On a point of clarification, unless it is traditional, why do you have to go through all that if the proposal is just an amendment and you do not know whether it will be accepted yet? Am I understanding you correctly?

Mr. Chairman: Yes.

Mr. Ferraro: Does the amendment, the proposal, have to be prepared bilingually before it is passed? It does not make a lot of sense to me, but maybe that is tradition.

Mr. Chairman: I do not think we have a particular tradition in that we have not normally dealt with the legislation at this stage.

Mr. Ferraro: I could see the logic after it is passed or accepted by the committee.

Clerk of the Committee: You are correct. I am only saying that if the amendments are approved, then you would--

Mr. Ferraro: Then you would have to do it. All right. I was confused, Mr. Chairman, when you said Mr. McFadden had to speak to the legislative clerk about the wording.

Ms. Schuh: It is just as necessary to have the French wording available as it is to have the English wording available before the committee approves the amendment, partly because this is a bilingual bill and the two versions are, at least in theory, of equal status, and partly because the preparation of the French version affects the wording of the English version. You could approve particular English wording and then discover, when you came to translate it after the fact, that it did not quite work or that you wanted to make adjustments. Those are the two reasons it is desirable to have both versions prepared before you vote on the motion, if that is at all possible.

Mr. Ferraro: I understand the uniqueness because I guess this is the

first bilingual bill in Ontario. What do you do in a situation when you have a spontaneous amendment?

Ms. Schuh: It would be desirable to let us know as soon as possible.

Mr. Ferraro: What if it is spontaneous and you know it right now? Does that mean I cannct present my amendment?

Ms. Schuh: You can present it and the committee can decide to give legislative counsel the indulgence to take a few hours or overnight to prepare a French version. You can postpone the final decision on your motion until the next day.

Mr. Ferraro: Mr. Chairman, is that the course of action, or can we vote on the amendment and give legislative counsel the authority to prepare the appropriate translation?

Mr. Chairman: The committee could decide at that point but I would suggest that the matter be stood down for the French version to be prepared if it is at all possible so that we could pass both versions at once. That is essentially what we are doing as we look at each section. It should be presumed by the members of the committee, as I ask if each section will carry, that I am saying that in both languages. If there is a question as to wording in one of the official languages you should raise it at that time.

Mr. Morin-Strom: Did we move--is there a supplementary to all these motions?

Mr. Chairman: Yes. Mr. Ferraro has just moved, and it has just been passed, that these government motions be incorporated into the document that we are using, to be considered as we move along through clause-by-clause.

Mr. Morin-Strom: What I do not understand, given the discussion we just had, is why they were not presented in French.

Mr. Chairman: There are French copies available. They just were not distributed. I will get you your French copy right now.

Mr. Epp: I want to go back to this matter about translation. Would it not help expedite the whole matter if we gave the legislative counsel the permission to make the necessary changes both in English and French, so you would not have to come back every time to see whether it met with the intention of the mover and seconder in this committee to have a particular amendment? This way, you are going to have to do everything twice. If you pass a motion in English, she then goes and translates it into French. Then you find you have to make, not a technical change but a small change that does not in any way alter the meaning of what is there. You then have to come back and change it again. My understanding is that in the past we have given legislative counsel the prerogative of making these minor changes, not in purpose, thrust and so forth, but in small, technical changes. I do not see why we could not do it in this committee to save ourselves going back and checking every single amendment we make and doublechecking it.

Mr. Chairman: What you are suggesting is that we delegate to legislative counsel the authority to interpret what we are saying in French and, as we pass it in English, we would declare it was being passed in French.

Mr. Epp: Also, that if they have to make a minor change in the

English version to accommodate the French translation, they have the authority to do so. Therefore, they would not have to come back to us every time. Over these 10 years, I have never found that legislative counsel has not met the directive of committees. I am just saying we would save ourselves a lot of time, if they have to make that change, by having the authority to make it without having to come back to us every time and check with us to see whether we are in agreement with it.

Mr. Chairman: That makes eminent practical sense. Would you like to so move?

Mr. Epp moves that counsel be given the authority to make changes in the English version if they find the French translation cannot literally be translated.

Ms. Schuh: You want to give us the authority to prepare a French version of a motion the committee has passed and give us the authority to make any necessary changes to the English in the process, even though the committee has already passed the motion with slightly different wording.

Mr. Epp: Provided, of course, that the English version is not changed.

Hon. Mr. Kwinter: You do not mind changes of form as long as they are not changes of substance.

Mr. Epp: That is correct.

Mr. Chairman: Does everyone understand the motion?

Mr. Epp: It just saves us a lot of time going back and checking it.

1610

Mr. Ferraro: I appreciate my colleague's intent and I have no difficulty with allowing him to prepare it in French, although I must admit---maybe this is from my banking days---when you give legislative clerks the authority to change the original motion that was passed by the committee in English, I have some difficulty. I think it is a responsibility that belongs solely with this committee, however slight it may be.

I realize, as my colleague was saying, that it does not change the substance. If there is a change in English, quite frankly, I think it should be brought to the attention of the committee. That is my opinion.

Mr. Chairman: All right. It may be the case that Mr. Epp is prepared to amend his motion to the effect that it be brought to the attention of the committee, if that is all he is saying.

Mr. Ferraro: Nobody else may agree with me but they may agree with Mr. Epp.

Mr. Morin-Strom: I agree with Mr. Ferraro. We cannot delegate the authority for the final version. We would have to approve any changes and they would have to come before us explicitly in the language we are working in, in my case in English. We would have to see the final English version and any changes that were made would have to be approved explicitly by the committee.

My feeling is that as long as I have confidence that the English translation is an appropriate one that has been approved, the French one cannot be inconsistent with it. I trust the legislative people will ensure that they are consistent and that the French translation will reflect accurately what we have studied, in my case individually, in English and will have passed. I think any changes that have to be made in English have to come back and be approved explicitly.

Mr. Epp: Let me speak to that. I do not want to belabour it. I am trying just to expedite the matter before the committee, but I can tell you that if you are going to have the confidence of the legislative counsel in French, which you do not understand--which most members do not understand in most cases--I do not know why you cannot have confidence in legislative counsel in English. That is what you are saying. You are often saying that you are doing it in English and they can translate it into French. Most of us do not understand French, or if we do, we do not understand it adequately enough. It is okay in that language, but it is not okay in English. I draw this inconsistency to your attention.

Mr. Morin-Strom: If I were comfortable with it in English, then I would not see why a change would be necessary. If a change were necessary, I would want to know the language of that change and whether, in my opinion, it was a substantial change.

Mr. McFadden: In this case, I would actually concur with Mr. Morin-Strom and Mr. Ferraro. The problem we get into is that there is no difficulty if this matter never goes to court and if everybody understands everything; but if we approved only the English version and the French version essentially was never reviewed by us, there could be potentially, considering the effect of the passing of this bill, something technically deficient with the bill and it would eventually go through the House with that translation there. If the meaning were changed even slightly, I wonder whether it could have some major impact on an individual or corporation.

While members of this committee may not be fluently bilingual and certainly not bilingual in all the legal terms--which is a different level of sophistication of just understanding colloquial French, or colloquial English for that matter--it would not be wise for this committee to do anything other than to approve it if it is an English amendment. We should then have to approve a French amendment, and I think the legislative draftsman should explain to us any changes of nuance or whatever that have been put into the French version.

That, after all, is something that is going to govern how people conduct themselves, and it is going to be important for a court to interpret what our intent was. Frankly, if this committee had no intent and did not know what it was doing when it passed this, if it gave a blanket approval for somebody to translate it and put in whatever words he felt were equivalent, I question whether this committee had been executing its duties.

I think we have to be as sure as we can get, given our level of knowledge and so on, that there is equivalency between the two languages. We have to have that assurance in this committee.

Mr. Chairman: The legislative counsel wishes to speak to Mr. Epp's motion.

Ms. Schuh: I think the comments the various members have been making illustrate that unless there is an urgent situation, it is really more

desirable for spontaneous motions to be prepared in English and French by legislative counsel so you can look at both versions and pass exactly what you want to pass in final form, rather than adopting an English text that has been prepared on the spur of the moment which then has to be prepared in a French version, possibly converted, possibly adjusted, and submitted to you again.

I think the most efficient and the fairest way of proceeding would be for you to discuss the matter, instruct legislative counsel and have legislative counsel come back to you as soon as may be--it may be in a few hours; it may be the next day--with the text of the motion in both languages.

There may be situations where time pressure is such that you want to adopt a given English text and give us the discretion Mr. Epp has been talking about. We would come back to you, of course, if we were making any changes beyond moving commas around. But, as a general rule, the best way to approach this is to give us the time to prepare the motion in both versions. We do work very quickly for you.

Mr. Chairman: Mr. Ferraro had an amendment to propose. Perhaps I should read the motion, and then you could word your minute.

"Unless we give the legislative counsel the authority to make changes in the English amendment if the French translation is different."

Mr. Ferraro: There is no point in amending it, because I do not agree with the motion I heard.

Mr. Chairman: I think the motion was also to the effect, though, that there should be authority to prepare the French translation subsequent to passing the vote.

Mr. Ferraro: As opposed to an amendment, I think that is a separate motion. I do not know whether Mr. Epp wants to continue with his motion, but it is quite narrow in its intent.

Mr. Epp: We are really getting into a hornet's nest here, because from what legislative counsel has told us, we are going to be asked to vote on the French translation. I find myself completely inadequate to vote on a French translation. I am sure I am not the only one in this committee who feels that way. To say that is the exact translation from English to French, and if we do that--and I can understand the legislative counsel's predicament, but in the past I have always accepted that what is here is in fact a literal translation.

If we are going to be asked to vote on the French being in fact an accurate translation from the English, I am going to have to get out of this committee, because I will not be able to do that. If you want to do it in German and English, I can maybe do it, but if you want to do it in French and English, I cannot.

Mr. Ferraro: I do not wish to procrastinate on this thing any longer, but I am afraid I am going to have to. Being fluent only in English and profane myself, I have some difficulty. Quite frankly, and I will speak for myself, I think the intent of the discussion is the degree of comfortability that I have in dealing with the English language.

I think Mr. Epp's point is very well taken. We are not experts in French, and I say that with respect to my colleagues on the committee. I think what we are comfortable with is dealing with English.

I have no difficulty in saying to the legislative counsel, "I trust you to translate in French." The difficulty I have with Mr. Epp's original motion is that it also gave them authority, which I think is beyond their scope, to change the English translation.

I am saying, "Fine, give them the authority to translate from English to French, but if they have to change the English amendment or wording in any way, shape or form, I think it is the purview of this committee to deal with it."

1620

Mr. Chairman: All right. As I understand it, Mr. Epp's motion is to give them the authority to translate to French and to make technical changes to the English words necessary to accommodate the French, and we would adapt the wording prepared by legislative counsel.

Mr. Ferraro is on the verge of proposing, or perhaps has proposed, an amendment simply to the effect that we give legislative counsel the authority to translate to French but not to include in the motion the authority to make changes in the English wording.

I am in the throes of a dilemma as to whether that is really an amendment to the motion or a contradiction to the motion. I think it probably is a contradiction, so I may entertain it later, Mr. Ferraro, but at the moment we are considering Mr. Epp's motion. Any other discussion?

Mr. Carrozza is suggesting that we defer the whole matter till we deal with each particular motion where there might be some controversy.

Mr. Morin-Strom: I would like to hear the exact motion.

Clerk of the Committee: I am very sorry; I did not catch all the words, but what I got was that the legislative counsel be given the authority to make changes in the English amendments if the French translation is different.

Mr. Chairman: The first part of that motion is missing. I think the first part of Mr. Epp's motion was that the legislative counsel be given authority to translate everything from English to French to begin with.

Mr. McFadden: Mr. Chairman, on a point of order: We could not possibly adopt that motion the way it is worded there. As a committee, we cannot authorize different law in different languages. The wording you just gave almost was saying that you could have different provisions from English to French. We are almost authorizing that to occur. As a committee, we cannot.

Mr. Chairman: No, we cannot; but my reading of the motion is that it is to try to correct the languages so they do match.

Mr. McFadden: That is something else.

Mr. Chairman: That is my understanding of the motion.

Mr. Ferraro: I would like to move Mr. McFadden as vice-chairman of this committee.

Mr. Chairman: I think the intent of the motion is that we try to let legislative counsel, as an expert, avoid future problems where the two languages may not match.

Mr. Morin-Strom: Why do we not give Mr. Epp a chance to withdraw the motion?

Mr. Chairman: Or perhaps Mr. Epp could take some time to prepare the motion to table in writing.

Mr. McFadden: The way that is worded, the way you were reading it, Mr. Chairman, I think it is in very serious trouble. That is my concern.

Mr. Epp: We will table it.

Mr. Chairman: Would you like to withdraw the motion, and then you can present it again at a later time, if you wish?

Mr. Epp: Okay.

Mr. Chairman: I am informed that we cannot table motions here.

Mr. Epp: You cannot? Do we not go under--

Mr. Chairman: I think a withdrawal serves the same purpose.

Mr. Epp: All right.

Mr. Chairman: I would like to remind members of the committee that we have a lot of interesting work on our agenda. I know some members of the committee have talked to me about a report on our trip to Washington and so on, and we can get to that, conceivably later this week, if we have Bill 116 back in for third reading.

Mr. Ferraro: Are you taking other amendments, Mr. Chairman?

Mr. Chairman: Yes, the sooner the better for notices of motion, but go ahead, if you have an amendment.

Mr. Ferraro: It goes along with the one recently presented by Mr. McFadden, clause 89(3)(a).

Mr. Chairman: You will be moving this?

Mr. Ferraro: I will be moving that the individual holds more than five per cent of the voting shares of the corporation or of any of its affiliates.

Mr. Chairman: Thank you, Mr. Ferraro, and we will deal with that when we get to section 89.

On section 1:

Mr. Chairman: Because section 1 is a definitions section, it might be appropriate to treat each definition as if it were a subsection and pass them individually. Then we can pass the whole section.

The first definition is of "accountant." The new government motion, which is not in the printed text but which was handed out today, reads, "'accountant' means a person who is licensed under the Public Accountancy Act." There is an explanation thereunder. Is there any discussion?

Mr. Ferraro: Why was it changed?

Hon. Mr. Kwinter: The change is to clarify that auditors of Ontario corporations must be persons licensed in Ontario. It could present some problems the other way.

Mr. Chairman: For definitions "affiliate" through to "corporation" there are no government amendments. Shall those definitions carry?

Apparently I have to go back to "accountant." Shall the definition, as amended, carry?

Mr. Mackenzie: Does that have any influence at all on the dispute we have from time to time between the chartered accountants, the certified public accountants and so on? In other words, is one group or the other disfranchised?

Hon. Mr. Kwinter: What it is really saying is that anybody who is licensed under the Public Accountancy Act in Ontario can do it. That determination is not made by a definition under the Loan and Trust Corporations Act. It is made under the definition under the Public Accountancy Act.

Mr. Mackenzie: In fact, that probably would eliminate--a chartered accountant would be okay--

Mr. Haggerty: A certified general accountant--

Mr. Mackenzie: --would not be okay.

Mr. McFadden: The previous wording probably would have excluded certified general accountants as well, would it not?

Hon. Mr. Kwinter: What we are really saying is that this is a problem all of us have heard about for years. We are not going to resolve it through this act. We are saying what will get resolved through the Public Accountancy Act. This is not a back door to resolve that problem through the Loan and Trust Corporations Act.

Mr. Haggerty: Why do you say the back door? What do you mean by the back door? It is not going to resolve it, though, is it?

Hon. Mr. Kwinter: Anyone who is authorized to practise under the Public Accountancy Act in Ontario at the present time will be eligible. There is a dispute that is ongoing between those two groups about the kinds of things they do under the Public Accountancy Act. That has not been resolved yet, but I assume it will be addressed because of the ongoing discussions. We are saying that we do not want to resolve that problem in the Loan and Trust Corporations Act and add another complication to it. We want to say that if the Public Accountancy Act accepts the two groups, that is fine; if it does not, it will be those licensed under the Public Accountancy Act.

Mr. Haggerty: What about those who have been grandfathered into that act previously? The new ones coming into the field are exempt.

Hon. Mr. Kwinter: If they are grandfathered, they are fine.

Mr. Chairman: Shall the definition of "accountant" carry? Carried.

1630

I am going to take each definition separately.

The definition of "affiliate" is unchanged from second reading. Shall that definition carry? Carried.

The definition of "bank" is unchanged from second reading. Shall that definition carry? Carried.

A new definition for "bank mortgage subsidiary" has been given to you in the new handout today with an explanation thereunder. Shall the definition of "bank mortgage subsidiary" as amended to add that definition to section 1 carry?

Mr. Mackenzie: Exactly what does it mean?

Hon. Mr. Kwinter: There is an explanation in the material that was handed to you. It says: "This definition is necessary in order to exclude bank mortgage subsidiaries from the definition of 'loan corporation.'...Bank mortgage subsidiaries are essentially integral parts of bank operations and are in existence only because of certain restrictions in the Bank Act on reserving and mortgage lending. The federal Minister of State, Finance, the Honourable Tom Hockin, has announced these restrictions will be eliminated. As a result, over time these subsidiaries will disappear." It is only an internal device to allow them to comply with the Bank Act. That is the definition.

Mr. Chairman: Shall the definition of "bank mortgage subsidiary" carry?

Mr. Ferraro: I have a question. What are we amending here?

Mr. Chairman: This is a new definition.

Mr. Ferraro: It is a new one. It not an amended one. It is a new one.

Mr. Chairman: It was not in the act as it came out of second reading.

Shall the definition of "bank mortgage subsidiary" carry? Carried.

Shall section 1, as amended to include the "bank mortgage subsidiary" definition, carry? Carried.

"Body corporate" is unchanged from second reading. Shall the definition of "body corporate" carry? Carried.

"Branch" is unchanged from second reading. Shall the definition of "branch" carry? Carried.

"Capital base" is unchanged from second reading. Shall the definition of "capital base" carry? Carried.

"Common trust fund" is unchanged from second reading. Shall the definition "common trust fund" carry? Carried.

"Company" is unchanged from second reading. Shall the definition of "company" carry? Carried.

"Corporation" is unchanged from second reading. Shall the definition of "corporation" carry? Carried.

"Deposit" has been amended to read as shown in your document. It originally read, "Deposit, in relation to a corporation, means money received by it under section 153." There is an addendum there now. Shall "deposit," as amended, carry? Carried.

Shall section 1, as amended with the amendment, carry? Carried.

"Depositor" is unchanged from second reading. Shall the definition of "depositor" carry? Carried.

"Director" is unchanged from second reading. Shall the definition of "director" carry? Carried.

"Extraprovincial corporation" is unchanged from second reading. Shall the definition of "extraprovincial corporation" carry? Carried.

"Financial statement" is unchanged from second reading. Shall the definition of "financial statement" carry? Carried.

"Improved real estate" is unchanged from second reading. Shall the definition of "improved real estate" carry?

Mr. Haggerty: What do you mean by "improved real estate"? I notice it is on page 5 there, but it is on the French side. Just what do you mean by "improved"?

Mr. Chairman: It is on page 6 in English.

Hon. Mr. Kwinter: Do you mean the term "improved real estate"?

Mr. Haggerty: Yes.

Hon. Mr. Kwinter: It is a legal definition. When you have a piece of real estate that is just land, that is land. If you put anything on it, it is improved.

Mr. Haggerty: The reason I raise that question is that there are a number of, I guess you would say, real estate brokers dealing in the area of investments. I am a little concerned about this because of the number who have gone into receivership who went out to the market to seniors with perhaps their pension or retirement funds invested in real estate. There have been two cases in the city of Port Colborne where they have gone under. Those persons' life savings have disappeared. Is there something in here saying we are going to have some protection in this particular area, that once they make that investment they have secured investment?

Mr. Ferraro: This is just a definition.

Mr. Haggerty: I know it is a definition but we are dealing with financial institutions in a sense, and real estate comes under it. All I am looking for is some place in this bill that is going to provide that an individual who takes his life savings to a real estate broker and invests it in land development or building homes is secured.

Hon. Mr. Kwinter: That has nothing to do with this section. What it is saying is that under the Loan and Trust Corporations Act, the only investments that a loan and trust company can make is in improved real estate, as a legal definition. All this does is give you that legal definition of what "improved real estate" means.

Mr. Haggerty: Look at the real estate broker in the area of investments who, going to the market for money, goes to somebody who gives him his life savings. He invests with the broker hoping that things are going to be there for his investment, but finds out that perhaps through some default, the scheme or project for development of homes in the community goes under. That person who puts money into the hands of the person responsible for the investment loses everything. When you are dealing with financial institutions, particularly the Real Estate and Business Brokers Act, I was just looking, for provisions that give some protection. This is what this bill is supposed to do, give anybody who is putting in money--

Hon. Mr. Kwinter: No, we are dealing only with loan and trust companies. What happens is that when you buy real estate and invest money, usually your investment is secured by a mortgage, which gives you a lien on that property. What has happened--we discussed this earlier today--is that there may be some problems where some real estate developers, speculators, are not in fact in a position to deliver a lien on a property. If they are just selling a concept, then they should not be selling the real estate. They should be selling a security with a regular prospectus through the Ontario Securities Commission. That is something we do. Basically, if you are buying real estate, whether it is unimproved or improved, what you get normally if you are smart and you have a lawyer acting on your behalf, is a legal charge on that property as a condition of advancing the money.

Mr. Haggerty: There are some lawyers out there, too, who are not smart.

Hon. Mr. Kwinter: But that is normally the way it works.

Mr. Haggerty: I am just saying I was looking for something in there to provide some security to persons who invest in a real estate broker's thing for obtaining money to go out and finance a housing project.

Hon. Mr. Kwinter: Not in this act, though. This act does not address that area.

Mr. Haggerty: So we get nothing in this area then?

Hon. Mr. Kwinter: Not in this act.

Mr. Haggerty: I thought when you are dealing with real estate, you would probably put something in here that would apply to that, too.

Hon. Mr. Kwinter: This is a loan and trust company act.

Mr. Haggerty: We have an open market out there, so we can have people go down the tubes.

Mr. Chairman: It is always open to members of the Legislature to raise legislation, but this is not really the purview of this particular act.

Mr. Ferraro, do you have a comment?

Mr. Ferraro: Just an addendum: I have no problem with that, but the minister indicated that trust companies could not lend on anything unless it was improved real estate. My understanding, very briefly reading this segment, indicates the only thing they cannot loan on is bare, agriculturally zoned lands that are not being used as a farm. In other words, you could have a vacant piece of land in the city--

Hon. Mr. Kwinter: Just so you will understand--I am sort of speaking from my experience in the real estate business as opposed to being a lawyer--what normally happens is that if you have a piece of land that has been zoned commercial or has had something done to it, even though it may be vacant, it is already improved real estate as opposed to vacant farm land. Once you get to the point where something has been done to it, it is improved. That does not necessarily mean under this definition that someone has actually constructed something on it, but it has been zoned, something has happened to it.

Mr. Chairman: Shall the definition of "improved real estate" carry? Carried.

1640

"Instrument of incorporation" has not been amended from second reading. Shall the definition of "instrument of incorporation" carry? Carried.

"Law of Ontario" has not been changed from second reading. Shall the definition of "law of Ontario" carry? Carried.

"Lending value" has been amended with the changes underlined, "the occurrence of which is remote and that have increased the market value of the real estate." Shall the definition of "lending value," as amended, carry? Carried.

"Loan corporation" has been amended in the handout you received today by inserting after the word "bank" in the fourth line "a bank mortgage subsidiary." Shall the definition of "loan corporation," as amended in the handout you received today, carry? Carried.

"Market value" has been amended--

Mr. Ferraro: May I go back to the last one, with the committee's approval, just on a point of clarification? Is that possible?

Mr. Chairman: I think I have to have unanimous consent from the committee.

Interjection: We can discuss it.

Mr. Chairman: We have not passed the whole section. Yes, you may.

Mr. Ferraro: Thank you.

I ask the minister, one of the concerns from the banking institutions dealt with their ability to transfer funds and so forth from the bank to their

mortgage subsidiary. Does this proposed change bring in any negative comments from the banks?

Hon. Mr. Kwinter: No, what this really does is just to take into account the fact we have added another definition.

Mr. Ferraro: That they are in it?

Hon. Mr. Kwinter: Yes, this makes it conform to the other definition.

Mr. Ferraro: Thank you.

Mr. Chairman: "Market value" was amended in the document you received and has been amended again in the material that was handed out today, so that it now reads, "'Market value' means the most probable price that would be obtained for property in an arms-length sale in an open market under conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and willingly." Shall "market value," as amended in that handout to you today, carry?

Mr. Ferraro: A question.

Mr. Chairman: Yes.

Mr. Ferraro: Could the minister or his staff indicate to me the reaction of the Ontario Association of the Appraisal Institute of Canada, if any, to this proposed change? It was of significant concern to the appraisal institute.

Hon. Mr. Kwinter: I think it was in response to their concern that it was changed from "cash" to "price." They felt that cash implied a forced sale for cash. The feeling we have is that it is a real problem with interpretation. No matter which one you want, somebody is going to put another sort of slant on it, but this was felt to be something that everybody could live with.

Mr. Chairman: I should bring to the attention of all members of the committee that legislative research has prepared a document, and it is in front of you. This is an update on a document that most of you received in your offices last week, which Catherine Evans has very carefully prepared. It has the comments, be they written or oral, of all the witnesses on the various proposals.

Mr. Mackenzie: Does that mean we should get rid of the one we got on April 30?

Mr. Chairman: Yes. There was some other material received very late and I compliment Ms. Evans, who worked part-way through the weekend, I understand, to try to make sure that everything was included in this document. You see from that document that there was some comment on the definition of market value assessment by the appraisal institute. Perhaps if you keep that open, you can keep aware of the comments that have taken place.

Shall the definition of "market value," as amended by the amendment we received today, carry?

Mr. Mackenzie: I also wonder why the word "cash" was taken out and the word "price" was substituted. Had it anything to do with the fact that

cash might have more influence than maybe cash and a transfer of property or property as--

Hon. Mr. Kwinter: The whole thing was the implication that when you say "cash," it gives the impression that it had to be a cash transaction and maybe a bailout. What they were really trying to do was talk about market value, so it was not the cash transaction that took place but what price was established for that property. That is really what we are talking about. It was really on that basis that it was suggested we change it.

Mr. Chairman: Is there any other discussion of "market value"? Shall the definition of "market value," as amended, carry? Carried.

The definition of "minister" has not been changed from second reading. Is there any discussion of that? Shall the definition carry? Carried.

The definition of "ministry" has not been changed from second reading. Is there any discussion of that definition?

Mr. McFadden: That is the darnedest meaning of something. Imagine: "'ministry' means the ministry of the minister."

Mr. Chairman: Yes, minister.

Ms. Parrish: It is comic relief.

Mr. McFadden: Whose other ministry does the minister--it is hard to figure the minister to be the minister of some other ministry. It does not make sense. What else could you say?

Mr. Chairman: But we all know what it means, do we not?

Mr. McFadden: Yes.

Mr. Ferraro: I am probably going to be ruled out of order here, but my question is, must we go through this the way we are? Unless the members have some particular clause--I am not talking about the amended ones, but there are a lot that--

Mr. Chairman: When we get to the second section, it is my intention to move through the sections in which there have been no amendments proposed--

Mr. Ferraro: And no indication of amendments.

Mr. Chairman: That is right. I have been informed by the clerk that it is common to move more carefully through the definitions section.

Mr. Ferraro: All right. Thank you.

Mr. Chairman: Shall the definition of "ministry" carry? Carried.

The definition of "mortgage" has not been changed from second reading. Shall that definition carry? Carried.

The definition of "offering corporation" has not been changed since second reading. Is there any discussion? Shall that definition carry? Carried.

The definition of "officer" has not been changed from second reading. Is there any discussion? Shall that definition carry? Carried.

There is a definition of "personal representative" that was not in the second reading. It is entirely added as a proposed government amendment. Is there any discussion? Shall the definition of "personal representative," as amended, carry? Carried.

The definition of "prescribed" is unchanged from second reading. Is there any discussion? Shall that definition carry? Carried.

The definition of "principal place of business" is unchanged from second reading. Is there any discussion? Shall the definition carry? Carried.

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The definition of "provincial corporation" is unchanged from second reading. Is there any discussion? Shall the definition carry? Carried.

The definition of "real estate" is unchanged from second reading. Is there any discussion? Shall the definition carry? Carried.

The definition of "registered corporation" is unchanged from second reading. Shall the definition carry? Carried.

The definition of "registered form" is unchanged from second reading. Is there any discussion? Shall the definition carry? Carried.

The definition of "regulations" is unchanged from second reading. Is there any discussion? Shall the definition carry? Carried.

The definition of "resident Canadian" is unchanged from second reading. Is there any discussion? Shall the definition carry? Carried.

The definition of "restricted party"--clauses (a) to (d) inclusive are unchanged since second reading. Clauses (e) to (fb) have been amended as shown, as have clauses (j) and (ja). Clauses (g) through (i) and (k) are unchanged. Is there any discussion?

Mr. Ferraro: We are talking about "restricted party," are we not?

Mr. Chairman: Yes.

Mr. Ferraro: Why, under clause (c), do we come up with the 10 per cent figure?

Hon. Mr. Kwinter: What information I have is that it is to parallel the voting shares of the corporation. It is really just to find anyone who has a significant interest in the company. There is nothing magic about it. It just parallels one with the other.

Mr. Ferraro: No objection from anybody on that figure?

Interjection: No.

Mr. Chairman: Is there any further discussion? Shall the definition

of "restricted party," as amended in those places where it has been amended by government motion, carry? Carried.

The definition of "securities register" has not been amended. Is there any discussion? Shall the definition carry? Carried.

The definition of "security" has not been amended. Is there any discussion? Shall the definition carry? Carried.

The definition of "special resolution" has not been amended. Shall the definition carry? Carried.

The definition of "spouse" has not been amended. Is there any discussion? Shall the definition carry? Carried.

The definition of "subordinated note" has not been amended. Is there any discussion? Shall the definition carry? Carried.

The definition of "superintendent" has not been amended. Shall the definition carry? Carried.

The definition of "total assets" is an entirely new definition that was given to you under the government amendments. Is there any discussion? Shall the definition, as amended, carry? Carried.

The definition of "trust corporation" has not been changed from second reading. Is there any discussion? Shall the definition carry? Carried.

The definition of "voting share" is unchanged from second reading. Is there any discussion? Shall the definition carry? Carried.

Shall section 1, as amended, carry?

Mr. Morin-Strom: I would like to ask a question of the staff, and that is whether any of the submissions we have had questioned any of these definitions. Were there any contentious points; in particular, in this long definition of "restricted party"? Were any of those criteria contentious points by any of the people we have had before us in public hearings?

Mr. Chairman: Are you asking ministry staff?

Ms. Parrish: I thought you meant your own staff.

Mr. Morin-Strom: Either, I guess.

Ms. Parrish: To my knowledge, the Institute of Chartered Accountants of Ontario raised the definition of "accountant" and it is satisfied with the new definition. The Canadian Bar Association--Ontario raised the issue of "deposit" and the Ontario Association of the Appraisal Institute of Canada raised the definition of "lending value" and the definition of "market value," which have been changed. Of the four items that were raised, we have motions for two of them and we have not changed the other two sections from what is before you.

Mr. Morin-Strom: Then according to Ms. Evans's documentation, those are the four that were raised with us as well.

Ms. Evans: Some groups were concerned with the kinds of transactions

that would be allowed under the act with restricted parties, and that comes up later in the act, but none of them was actually concerned about the definition of "restricted party." Some groups were seeking exemptions to certain--

Mr. Morin-Strom: There were no concerns about whether it should be 50 per cent or 10 per cent? It seems to me we have had some concerns about percentages of ownership.

Ms. Parrish: Perhaps I might speak to that issue, if it is agreeable. Questions were raised as to those various percentage points when the bill was brought forward for first and second readings. When we came forward for second reading, the committee suggested we should consult all the interested parties to see whether we could find out the problems and what the appropriate solutions would be. We did proceed to have an extensive consultation with all the persons who had indicated various concerns. That is why we made certain changes to the bill. In fact, we did have consultation and therefore made those amendments.

To my knowledge, what has happened is that we have made changes to the "restricted party" definition that have satisfied the persons who were making their concerns known at an earlier level, particularly about whether the test should be 10 per cent or 50 per cent, which is control. We went through a consultation on that. As Ms. Evans has indicated, those people who have remaining concerns about restricted parties are really more concerned about what is banned and what is not and what exceptions are allowed and what exceptions are not allowed, as opposed to who the restricted parties are.

Mr. Morin-Strom: The one that concerns me is clause (ja), which uses 50 per cent as a test of whether the corporate body should be restricted under certain circumstances. That sounds to me like a very high percentage test if the other tests are 10 per cent.

Ms. Parrish: Yes, but of course this is only an indirect restricted party in the sense that if you are a direct owner, a direct officer or whatever, then it is 10 per cent. All we are saying is that if you go indirectly to something that the officer or the director has an interest in, you have to go to the control test. That is really just an exercise in drawing a line as to who is likely to have a significant influence upon the trust company. By the time you get down to clause (ja) the connection is indirect; that is, the person is not a direct owner, officer, director or affiliate. This is something that some indirect connection owns. The idea was to cut it off at 50 per cent or control because otherwise you would be spreading your tentacles wider and wider and making it more and more difficult to determine who are the restricted parties.

Mr. Chairman: Mr. Haggerty, do you have a comment?

Mr. Haggerty: I just want some clarification on the auditor of the corporation. If the auditor is a sole practitioner, I want to know what the duties of the auditor are and what credentials are required under the act, if any. We have the Public Accountancy Act defined in there, but when you come to the auditor, what is his specialist field? What credentials does he have to have? It seems to me an auditor plays a rather important role in a financial institution.

1700

Mr. Chairman: You are concerned that there is no definition.

Mr. Haggerty: There is no definition there. It says the Public Accountancy Act, which defines that you have to have an accountant, but an auditor--

Hon. Mr. Kwinter: In Ontario, an auditor by law must be regulated under the Public Accountancy Act. Only certain people can hold themselves out as auditors. Now if you want to have a definition in there--

Mr. Haggerty: I just questioned that part. The credentials have to be that he is an accountant.

Hon. Mr. Kwinter: He has to be an accredited auditor. By definition, that means he is an accountant.

Mr. Haggerty: An accountant, but you have two or three different areas of accountants, do you not?

Hon. Mr. Kwinter: Actually, later on under section 115--

Mr. Haggerty: I was looking at section 112.

Hon. Mr. Kwinter: Section 115 says, "A person is disqualified from being an auditor of a provincial corporation if the person is not an accountant and if the person is not independent of,

"(a) the corporation and its affiliates; and

"(b) the directors and officers of the corporation and its affiliates."

Then it goes on. It is defined there.

Mr. Chairman: Is that satisfactory, Mr. Haggerty?

Mr. Haggerty: I will buy it anyway.

Mr. Chairman: Is there any other discussion of section 1 in total?

Section 1, as amended, agreed to.

On section 2:

Mr. Chairman: Subsections 2(1) through 2(3) have not been amended since second reading. Is there any discussion? Shall subsections 1 through 3 carry? Carried.

Subsection 4 has been amended. The definition of subsection 4, as it came out of second reading, was,

"For the purposes of this act, a body corporate shall be deemed to be the subsidiary of another body corporate if,

"(a) it is controlled by,

"(i) that other" body corporate.

You will note Ms. Evans's notes with regard to section 2. Is there any discussion of subsection 2(4) as amended? Shall subsection 2(4) carry? Carried.

Subsection 2(4a) has been further amended by the government motion that was presented this morning to create consistency between the English and French versions. Shall subsection 2(4a), as amended by the government motion--is there any discussion? Shall that carry? Carried.

Section 2(5) has also been further amended by the document you received today. In addition, there is a subsection 5a and a subsection 5b. The explanation is underneath the motion. Is there any discussion? Shall subsections 2(5), 2(5a) and 2(5b), as amended by the government's motion, carry? Carried.

Subsection 2(6) remains unchanged from second reading. Is there any discussion? Shall subsection 2(6) carry? Carried.

Subsection 2(7) has been further amended. It was amended in the document you have in front of you and was further amended by the motion of Mr. Ferraro today, so that in clause (a) it strikes out "10" and inserts "50."

Hon. Mr. Kwinter: The one he was talking about comes later on. It is 10 and five. He wants it reduced from 10 to five.

Ms. Parrish: Section 89.

Hon. Mr. Kwinter: That is in subsection 89(2).

Mr. Ferraro: Outside directors.

Hon. Mr. Kwinter: Yes. You will see the explanation of this. It was felt that 10 per cent was too restrictive and would be impossible to enforce. We are suggesting that as the result of the representations that were made, anything more than 50 per cent would give control and we could enforce that. That was the reason for this change.

Mr. Chairman: We had some representations to the same effect. Is there any further discussion?

Mr. Morin-Strom: Is it necessary to go to that extent? Why is it necessary? It sounds like a fairly extreme change from the original intention.

Hon. Mr. Kwinter: The feeling is that there are only two choices. It was not as if you could come somewhere in the middle. It was either that you talk about 10 per cent ownership, which is consistent with what we are talking about in many other areas, or you go to someone who has absolute control of the company. The idea was to establish it at that point because otherwise it would be impossible to police.

Mr. Morin-Strom: Who advocated 50 per cent?

Hon. Mr. Kwinter: The Trust Companies Association of Canada.

Ms. Parrish: I had some conversations with the Canadian Bar Association as well. Again, the main problem appears to be tracing these people. With all the goodwill in the world, people would be unable to

determine who these 10 per cent people were. This is not related to the "restricted party" definition where you use 10 per cent. It is quite easy to know, for example, who is a 10 per cent owner, but it is used in other connections. It was felt it was very difficult to determine who these people were unless you were dealing with a controlled test.

Mr. Chairman: Is there any other discussion of clause 2(7)(a)? Shall subsection 2(7), which includes clauses (b) and (c), as amended, carry?

Mr. Ferraro: May I ask a question? I apologize. I must admit that unlike other members of this committee, I am not sure I understand what we are doing here, from 10 to 50. Let me ask the question. By changing this restricted percentage from 10 per cent to 50 per cent, does it in any way jeopardize the concern we have as legislators that the consumer is protected?

Hon. Mr. Kwinter: No, that is covered somewhere else.

Mr. Ferraro: Later on.

Hon. Mr. Kwinter: Yes.

Mr. Ferraro: Okay, so it is just a matter of identification then, more than anything else. Is that right?

Hon. Mr. Kwinter: Yes.

Mr. Chairman: All right; clause 2(7)(a).

Mr. Haggerty: Let us hold it until we move into the other area that is coming. There is another clause of the bill that will reflect upon this 50 per cent and I would like to see it. I do not know what section we are looking at. That is a pretty drastic change, from 10 to 50.

Mr. Chairman: Do you want to hold it down?

Mr. Haggerty: Just until we move into this other section, to see whether it is compatible.

Mr. Chairman: We can come back to this section and reopen it, if you wish. If it is the wish of the committee, we can hold this section down.

Mr. Haggerty: There may be another section in there.

Mr. Chairman: Do you know where you would want to deal with it?

Mr. Haggerty: I think we had better take a look at this other side of it.

Mr. Ferraro: With respect to Mr. Haggerty's motion, does the committee not have the authority, when it gets to that section, to refer back to this section notwithstanding the fact that it has passed the motion?

Mr. Haggerty: As long as it is understood.

Mr. Ferraro: As long as that is understood.

Mr. Chairman: I think we would need unanimous permission.

Mr. Morin-Strom: This seems to be basically a definition. We do not know where it is being used or how it is being used.

1710

Hon. Mr. Kwinter: It says right in the preamble to it, in sections 62 and 69.

Ms. Parrish: Those are the share transfer provisions.

Hon. Mr. Kwinter: Those are the share transfer provisions. For the purposes--

Mr. Ferraro: But we are not up to sections 62 and 69.

Hon. Mr. Kwinter: What we are saying is that this definition, and it is related only to those sections 62 and 69, "shall be deemed to be related" if they have more than 50 per cent. It was felt that when it was at 10 per cent, it was too restrictive and it would be impossible to determine these people, whereas if someone controls a company, and it is only for that section where it is deemed to be related, then the person can be identified. It has nothing to do with the general provisions of the Loan and Trust Corporations Act. It has to do only with sections 62 and 69 and that is exactly what it says.

Interjection: Sections 62 to 69.

Hon. Mr. Kwinter: I am sorry. It is sections 62 to 69, which deal with that aspect of it.

Mr. Haggerty: If you were dealing with an offshore company in a takeover, you say 50 per cent, but you could still have five of them out there who had 10 per cent and they would still have control of it.

Hon. Mr. Kwinter: There are provisions for related companies. They all get lumped in together.

If you want to hold it down until we get to sections 62 to 69, I have no problem with that.

Mr. Chairman: Do you so move, that we defer consideration of clause 2(7)(a)?

Mr. Haggerty: Yes, that is right, until we get into this in more detail.

Mr. Chairman: Until we complete sections 62 to 69?

Mr. Ferraro: Would you have to hold off the whole section?

Mr. Chairman: We would have to hold off the whole of subsection 7. Is that right? Is it the whole of section 2?

Interjection.

Mr. Chairman: All right. The motion is that all of section 2 would be held off until we have finished section 69.

Interjection.

Mr. Chairman: I am informed we cannot do that. Is that right? We have to relook at the rest of section 2.

Mr. Haggerty: If you pass clause 2(7)(a), that means you automatically pass sections 62 to 69.

Hon. Mr. Kwinter: No, all you are doing is talking about a definition that applies to sections 62 to 69. Just because you approve that does not mean you approve sections 62 to 69. All it does is indicate who is caught by sections 62 to 69. Just because you approve that does not mean you approve sections 62 to 69.

Mr. Haggerty: You will have to have an amendment to section 62 then. You have "10 per cent" there.

Hon. Mr. Kwinter: That will have to be changed when we get to it. We will propose an amendment when we get there.

Mr. Haggerty: That is what I am saying. Before we move to that, we had better take another look at this, when you are changing the numbers.

Hon. Mr. Kwinter: That is fine; no problem.

Mr. Chairman: Are you suggesting that the appropriate time to consider whether it is 10 per cent or 50 per cent would be before section 62 but at the time we are at that portion of the act?

Mr. Haggerty: If we adopt clause 2(7)(a), it automatically goes through. Then it has been changed to 50 per cent. It may raise some questions. That is all I am saying. I just say we should defer it until we move to section 62. It follows the train of thought and the questions that may be raised by committee members.

Mr. Chairman: I think your motion is that it should be considered between sections 61 and 62.

Mr. Haggerty: I do not think I would put a motion. I just suggest caution when we get to that. That is all I am asking for.

Mr. Chairman: I would like a motion if we are going to do that.

Mr. Morin-Strom moves that we defer subsection 2(7) until we have completed consideration of sections 62 through 69.

Is there any discussion? All in favour? Carried.

On section 3:

Mr. Chairman: Section 3 has been unchanged since second reading. Is there any discussion?

Section 3 agreed to.

On section 4:

Mr. Chairman: The definition in subsection 4(a) has been changed. It

previously read, "loans from banks or registered corporations in the usual course of business, or." You can see there have been some additions to that. Is there any discussion? Shall subsection 4(a), as amended, carry? Carried.

Subsection 4(b) has been unchanged. Shall Subsection 4(b) carry? Carried.

Section 4, as amended, agreed to.

On section 5:

Mr. Chairman: Section 5 has been unchanged from second reading. Is there any discussion?

Section 5 agreed to.

On section 6:

Mr. Chairman: Section 6 is the same way. Is there any discussion?

Section 6 agreed to.

On section 7:

Mr. Chairman: Subsection 7(a) formerly read, "in the locality where the principal place of business of the proposed corporation is to be located, there exists a public benefit and advantage for establishing a loan corporation or an additional loan corporation." You can see that wording has been reduced.

Is there any discussion? Shall subsection 7(a), as amended, carry? Carried.

Subsection 7(b) is unchanged from second reading. Is there any discussion? Shall subsection 7(b) carry? Carried.

Subsection 7(c) has been changed to add the words, "and is fit as to character to own 10 per cent or more of such class of shares." Is there any discussion?

Hon. Mr. Kwinter: This might be the spot where--you were showing some concern about the 10 per cent. This covers the 10 per cent. The other thing we are talking about, the 50 per cent, is in a different context. I just wonder if you understand that.

Mr. Epp: Who defines "and is fit as to character"?

Hon. Mr. Kwinter: I guess it is the superintendent of loans and trusts.

Mr. Epp: Does he have criteria under which he judges people? Does he decide that himself?

Hon. Mr. Kwinter: I would think so. I think he has the ability to make investigations, and if he feels that--

Mr. Epp: But are there criteria? Does he have to have an assessment by somebody? Does he have to meet certain financial regulations? Does he have

to have a certain amount of whatever? He does not just, on a whim, say, "This guy is fit and the other guy is not fit"?

Ms. Parrish: In this particular provision, the person who has to be satisfied is the Lieutenant Governor in Council. Later on, however, we have the same provision on registration, where it would be the superintendent of deposit institutions. My understanding is that in looking at whether a person is fit as to character, what they is do is check the person's background. They request information about his or her financial ability and so on. Where does the money come from, etc.? They do a criminal records check. They check to see whether the individual has been convicted of offences under other provincial statutes, under the Income Tax Act and so on. Those are the kinds of inquiries that are conducted.

You are quite right in saying this is an area of judgement. It is indeed an area of judgement where there is latitude for the Lieutenant Governor in Council and later for the superintendent, because it has been judged that this is an area where one of the best methods of regulation is prophylactic in terms of keeping individuals out.

Mr. Epp: I guess my point is that it would never happen under this government, but I would not want it to happen under another government, where somebody would say, "He is a New Democrat and therefore he is not fit." Do you know what I mean? I am being partly facetious, but on the other hand I am being serious that you need to have some kind of criteria written down to determine it like you do a credit check or whatever.

Mr. Haggerty: I have difficulty with the word "fit." It can be used in so many ways. Would not "qualified" be better? Then you are spelling out that he has to have some credentials. You can have a "fit" in industry that is sloppy and you can have one that may be right on. You can use it in health areas too.

Ms. Parrish: You can own a trust company--

Mr. Morin-Strom: Is this a similar provision to that under the banks where there is an absolute restriction to 10 per cent?

Hon. Mr. Kwinter: Under the banks there is an absolute prohibition. You cannot own more than 10 per cent of a bank. We are not saying that you cannot own more than 10 per cent of a loan and trust company, but we are saying that if you do own more than 10 per cent--what happens now is that if you want to buy shares in a loan and trust company and you call up your broker, you do not have to satisfy him as to your fitness to own those shares. You have to do it only once you get to the point where you are at 10 per cent or higher.

1720

Mr. Morin-Strom: My point is that this is a case where we are not following the federal regulations or legislation for banks.

Hon. Mr. Kwinter: That is correct.

Mr. Morin-Strom: There is an absolute 10 per cent restriction.

Hon. Mr. Kwinter: That is correct.

Mr. Morin-Strom: What is the justification for not moving to that kind of absolute restriction?

Hon. Mr. Kwinter: We have made the determination that it would be very disruptive to the industry. Right now, the industry is closely held as opposed to widely held. It would have what we consider to be very serious impacts on the industry. It would stifle totally the entrepreneurship and the desire to take a loan and trust company that can be started by a relatively small group of people and build it up. It gets to the point where the better you do, the less incentive there is to do any better because once you get past 10 per cent you are no longer in control of your company.

What we decided to do as a matter of policy was to bring in stringent arm's-length and conflict-of-interest guidelines and legislation to make sure we correct the problem that is supposed to be addressed by the 10 per cent ownership.

The other problem, of course, is that if you take a look at the Canadian Commercial Bank and the Bank of British Columbia, notwithstanding their 10 per cent problem, they still failed. What happens effectively is that even if you put a restriction of 10 per cent on the banks, it is so widely held that the only people who really control the bank are the people who, if they have 10 per cent, would effectively control it. You do not solve your problems just by coming up with these magical numbers.

We took a look at both areas and decided that for Ontario and for the loan and trust industry, this was a better way to go, but we spent a great deal of time examining the two alternatives.

Mr. Morin-Strom: What is the position of the banks?

Hon. Mr. Kwinter: The banks?

Mr. Morin-Strom: Did the banks have a position on this specific point?

Hon. Mr. Kwinter: I imagine they would probably take the position that they have a restriction under the federal act to limit their holdings by any one entity to 10 per cent and that they would like to see us do the same thing only because of their restriction. Our feeling is that we looked at that and we have opted for this route. Only the A banks are affected by that 10 per cent ruling; the B banks are not.

Mr. Chairman: Mr. Haggerty, did you want to move an amendment? You suggested a different wording.

Mr. Haggerty: I suggested "qualified" would be a more suitable word.

Mr. Chairman: Did you wish to move that as an amendment?

Mr. Haggerty: If there is no objection from counsel.

Ms. Parrish: If I can comment on the word, I realize that the word "fit" sounds as if nobody can own a trust company unless he can do the four-minute mile or whatever, but it is consistent with the language we have used in other sections. For instance, we say that the proposed management has to be fit as to character and as to competence to manage the company and that the directors have to be fit as to character and competence. The problem with

"qualified," when you use it in terms of character, is that "qualification" sounds as though, if you have a bachelor of arts or you have taken a course, you are qualified. What we are trying to get at is the question of personal judgement as to an individual's integrity. I think that is a judgemental factor as to whether an individual is likely to be the kind of person who is honest.

Mr. Chairman: Is that satisfactory, Mr. Haggerty? She was referring to subsections 7(b) and (d) as well as (c).

Mr. Epp: Does that fit with the definition?

Mr. Haggerty: I still question it, but I am not going to be sticking to an issue on it.

Mr. Chairman: Is there any further discussion of subsection 7(c)?

Mr. Ferraro: I have a general question and I apologize for not knowing the answer to this: Can a corporation own the same as an indiviudal under the proposed--

Hon. Mr. Kwinter: Yes.

Mr. Ferraro: Can a financial institution own more than 10 per cent of a trust company?

Hon. Mr. Kwinter: Yes.

Mr. Ferraro: So you could have a scenario where, for example, the Royal Bank of Canada could effectively own Royal Trust Corp.?

Hon. Mr. Kwinter: That may not be allowed under the Bank Act.

Ms. Parrish: Yes.

Hon. Mr. Kwinter: The Bank Act may forbid it, so they get caught that way.

Mr. Ferraro: Maybe this is a dumb question, but if they change the Bank Act, which they are considering doing, would we not have to change Bill 116, or is that a concern of the ministry?

Mr. Morin-Strom: What about Chase Manhattan Bank?

Hon. Mr. Kwinter: That would be caught under the foreign ownership regulations. There are lots of things the federal government could do that would impact on what we are doing and we would then have to deal with it, but at present it is not contemplated that we would do that.

Mr. Ferraro: I understand what the minister is saying. I am just a little concerned, though, that if this is under the auspices of the provincial government and you as minister, we rely on legislation other than our own to prevent a situation where competition is somewhat limited.

Hon. Mr. Kwinter: What we have done, and this is the essence of what we are talking about when we talk about the equals approach, is that we have a situation where we have federally chartered loan and trust companies and provincially chartered loan and trust companies. We have made the same

argument successfully with the federal government in regard to the securities industry, and that was the reason we have had that impasse. We are saying that we felt we could not, as provincial regulators, be in a position where we had two classes of citizens, where we had one group that said: "You cannot regulate me because I am a federal entity and as a result I will do what I want. You can only regulate those companies that are provincially chartered."

What happens when you do that is you get a situation where you have a sort of charter-jumping. People look at the jurisdiction and say, "We have a provincial charter and it would be to our advantage to have a federal charter," or, "We have a federal charter and it would be to our advantage to have a provincial charter," or another province would say--to give you examples, Quebec, British Columbia or Alberta--"Let us see whether we can skim some of the business away from Ontario and let us set up some other criteria."

This is the essence of what we are talking about with our equals approach. We are saying that we are prepared to make some accommodation so that they do not have to change their basic company structure in this other jurisdiction. If we pass bylaws that enable them to operate in Ontario, everybody operates on the same basis so we do not have that. If you come into Ontario, we have a level playing field and everybody is equal. We do not have a situation where we have different classes of citizens.

This was exactly the problem we had with the securities industry. The federal government felt it had sole jurisdiction over the banks and it wanted to retain it. We said: "That is fine. We want to regulate by function." They said they wanted to regulate by institution. We said that if we are dealing at the retail level, we cannot have the banks saying: "This does not apply to us. We will go out and do our own business without any interference from you regulators."

The federal government came to the conclusion that we were right, finally, when we explained it often enough. What I had pushed for all along was for us to define what stays in the federal bank entity in-house and what must go into a wholly owned subsidiary at the retail level, so everybody knows what everybody else is supposed to be doing and what can be done in the one entity and what can be done in the other. They finally agreed to that and we came up with a deal, and that is exactly what we are doing.

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We are saying the same thing for the loan and trust industry. We will have regulations that will not be more stringent for one group than another. They will be the same applied to everybody who deals in Ontario. Regardless of where you come from--we have said this--we will make an accommodation so that it does not put an undue hardship on other jurisdictional loan and trust companies where they have to change their whole corporate structure, as long as they pass adequate bylaws to allow them to conform to our regulations in Ontario. That is where we are, so we can protect them that way.

Mr. Ferraro: The point is that everybody who is going to play in Ontario, if I can use that vocabulary, is going to play by Ontario's rules and not those of the feds.

Hon. Mr. Kwinter: Right. What we are saying is that we have had consultation with the federal government, and certainly the whole thrust of this ministry is harmonization, to make sure that we are not arbitrarily doing something. On the other hand, we have to have some level of control. We have

to know that if we have solvency standards we can impose them and that we are not going to have some people who say: "Sorry. I can do whatever I want and you cannot touch me. I am exempt because I am in some other jurisdiction."

We are saying that when the crunch comes--if we had a failure of a federally chartered institution, notwithstanding, if it were in Ontario, the first question I would get in the House would be, "What did you do about it?" I cannot say, "I did not do anything because I do not have any control," I have an obligation as the Minister of Financial Institutions to protect Ontario depositors, the people who are doing business in Ontario.

We are saying we will work it out with the other jurisdictions to make sure, again, that we are not going to prejudice them in any way. They will be the same regulations that everyone in Ontario follows. If you want to do business in Ontario, here are the criteria. If you can meet them, we will let you do business; if you cannot, then you cannot. That is what we talk about with our equals approach.

Mr. Chairman: Is there any other discussion of clause 7(c)? Shall clause 7(c), as amended, carry? Carried.

Clauses 7(d) through 7(f) are unchanged from second reading. Is there any discussion? Shall clauses 7(c) through 7(f) carry? Carried.

Section 7, as amended, agreed to.

On section 8:

Mr. Chairman: Clauses 8(a) to 8(c) are unchanged from second reading. Is there any discussion? Shall clauses 8(a) to 8(c) carry? Carried.

Clause 8(d) has been amended to read: "(i) Each of the first directors of the corporation." The word "first" has been added since second reading. Is there any discussion?

Shall clause 8(d), as amended, carry? Carried.

Section 8, as amended, agreed to.

On section 9:

Mr. Chairman: Section 9 has been unchanged since second reading. Is there any discussion?

Section 9 agreed to.

On section 10:

Mr. Chairman: Clauses 10(1)(a) through 10(1)(c) are unchanged from second reading. Is there any discussion? Shall clauses 10(1)(a) through 10(1)(c) carry? Carried.

Clause 10(1)(d) has been changed. It previously read, "to change the principal place of business of a corporation." You see the reading as it has been amended. Any discussion? Shall clause 10(1)(d), as amended, carry? Carried.

Subsections 10(2), (3) and 4 are unchanged from second reading. Any discussion? Shall those subsections carry? Carried.

Clause 10(5)(a) has been changed from "$10 million" to "$5 million" in two places. Any discussion? Shall clause 10(5)(a), as amended, carry? Carried.

I misstated clause 5(a). It has only been changed in one place, the first place you see it. It is still "$10 million" in the second. Does that change anybody's mind on clause 10(5)(a). No? All right.

Clause 10(5)(b) is unchanged from second reading. Any discussion?

Mr. Ferraro: I have a question; maybe it is a dumb question. I think this capital base was $1 million at one time. It was raised to $5 million and now we are raising it to $10 million, is that right? Is there some clarification in there or prerequisite that it is unencumbered? In other words, if I want to start a trust company and I borrow $10 million against something, there can be no charge against the capital I am putting into that.

Hon. Mr. Kwinter: You have to satisfy the superintendent of deposit institutions that it is capital. What happens is that as we go along, we are constantly--these companies work on what is known as a lending multiple. They have to satisfy themselves that this is true capital and not just pledges or anything else. It has to be capital and it has to be secured. They satisfy themselves that the security is there. On a regular basis, whenever I have to authorize an increase of a multiple, I get a report telling me that this is what the capital is, that they are satisfied this is the true capital of the company.

Mr. Ferraro: What I am trying to get at is if somebody or a group of people borrows $10 million, is that money unencumbered as a base in that entity or is there a charge against that $10-million base?

Hon. Mr. Kwinter: The capital that goes in is unencumbered.

Mr. Ferraro: I assumed that.

Mr. McFadden: I am not exactly clear what Mr. Ferraro was getting at. Presumably you can put a charge on your shares to a financial institution that lent you the money, but the money, as it is in the corporation, cannot be encumbered.

Hon. Mr. Kwinter: The money you put up cannot be encumbered. You may have other encumbrances as an individual and everything else. In other words, they cannot claim on the capital of the corporation.

Mr. McFadden: Of the corporation?

Hon. Mr. Kwinter: Yes.

Mr. McFadden: The trust corporation.

Hon. Mr. Kwinter: Yes.

Mr. Ferraro: But they can take the shares as collateral?

Hon. Mr. Kwinter: It is like me giving you a deposit on a house and saying, "Here is $5 million," and you put it in the bank. I do not care whether you had to go out and borrow it or you encumbered yourself to get that $5 million, but once the $5 million goes into that trust account, or once it is in there as the capital, your problems have nothing to do with that money. That money is there as the unencumbered capital of that company.

Mr. Ferraro: I am fantasizing. What would happen if I borrowed $10 million, charged it to a bank that took my shares, which are over 50 per cent, as security and I went broke? Does the bank become the owner of the trust company, which is contrary to the Bank Act?

Hon. Mr. Kwinter: You cannot pledge that. How do you deal with that?

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Mr. Reid: The kind of situation we are talking about here is where, for example, a person borrows $10 million from the bank and then secures that borrowing with the shares of the corporation in which he is investing the money.

Although not directly precluded in the act, during our assessment of the application of that person to acquire a trust company or a loan corporation, that would not be viewed in any positive fashion whatsoever. Quite frankly, if that was the gentleman's or the group's source of income, I would not be prepared to recommend that to the minister as being a viable or potentially viable corporation.

Mr. Ferraro: Is it specifically not in the act per se? What you are telling me is that it is a judgement call, basically.

Mr. Reid: Yes.

Mr. Ferraro: Is there a specific reason why you do not have that in the legislation, to preclude judgement being somewhat arbitrary?

Mr. Reid: It is a little bit difficult, but as the minister has stated, once the capital is in the corporation, then it is most certainly there for ever, unless, of course, something happens to the corporation. The individual who put it there cannot remove that capital from the corporation.

Mr. Ferraro: That I understand.

Mr. Reid: When we were viewing that person's credentials, if he were obliged to borrow that much money then, obviously, it is unlikely he had earned sufficient capital to put further injections of capital into the corporation. It would be a judgement call, and that person would not be recommended.

Mr. Chairman: Any further discussion on clause 10(5)(b)?

Hon. Mr. Kwinter: That is part of section 7 that we are holding over. It talks about--

Interjection: Subsection 2(7).

Hon. Mr. Kwinter: No, section 7 is the one we are holding, are we not?

Interjection: No, subsection 2(7).

Hon. Mr. Kwinter: Yes. Subsection 2(7).

We are saying they have to demonstrate the adequacy of their financial resources and be fit as to character and all these things. All that is taken

into consideration. If somebody comes forward and says all he has is the money he borrowed from the bank in the hope that he is going to take the shares and pledge them against the $10 million, then obviously, he does not have the--

Mr. Ferraro: Let me rephrase the question. Is there a consideration in the act, other than the judgement call, that would spell out the degree, as opposed to the whole amount?

I borrow $10 million, I come in and I want to apply for a corporation charter for a trust company, and $5 million of it is pledged against real estate that I own. Is there anything in the act that says at what point in time Rick Ferraro could be considered a good risk to own a trust company, even though he has half of it pledged in shares back to the bank? Do you understand what I am saying?

Hon. Mr. Kwinter: Yes.

Mr. Ferraro: Or does it say that if Rick Ferraro is going to start a trust company, none of the shares he would get as his side of the ownership, having put up the capitalization of $10 million, can be encumbered? Does it say that anywhere? What I am trying to get is, at what point does judgement not come into it, or should it? The concern, of course, is that you want to control who owns it at all times.

Hon. Mr. Kwinter: The point we are making is that when the money goes in, it stays in. Which section is that under?

Ms. Parrish: Section 42.

Hon. Mr. Kwinter: Subsection 42(5) says, "On and after the day this section comes into force, a share in a provincial corporation shall not be issued until the consideration for the share is fully paid in Canadian dollars and received by the corporation."

Once the money goes into the corporation, it stays in there as capital. It has to be fully paid for in Canadian dollars. That is the point I was making earlier. You, as an individual, may have all sorts of other encumbrances, but there is no way that anyone can encumber that share capital of the corporation. It is in and it is paid for, so that you, in your personal capacity as Rick Ferraro, may have all sorts of financial obligations, but the share capital of a loan and trust company has to be fully paid for and it has to be in the corporation and, once it is in there, you cannot take it out.

Mr. Ferraro: Explain to me, Minister. If I put in $10 million, I take back shares as a sign of ownership. My understanding of what you are saying is they cannot encumber the $10 million.

Hon. Mr. Kwinter: That is right.

Mr. Ferraro: My concern is what I can do with the shares that I get as security for my $10 million. Is the ministry or the government concerned in any way, shape or form with what I do with the shares? Because, in fact, the shares are the $10 million.

Hon. Mr. Kwinter: We are concerned if you trade any of those shares that represents more than 10 per cent of the total share capital.

Mr. Ferraro: I understand what you are saying about the $10 million

capital, that it cannot be encumbered. But, getting back to my shares, does it matter to the minister and the government what I pledge those shares to or to what degree I pledge those shares? In other words, what I am getting at is if I have $10 million in shares, that is an asset I am probably going to use for leverage, possibly for something else.

Hon. Mr. Kwinter: The point is you can do that, but there is no way that you can take those shares and withdraw that money from the corporation.

Mr. Ferraro: I understand that.

Hon. Mr. Kwinter: What you can do is, if you take your shares and pledge them, the quality of that pledge will be determined by the person who evaluates what that really means. They are saying I cannot go and sell them; all I can do is trade them. That is what happens when you talk about their being worth so much book value.

Mr. Ferraro: I will end it with this, because I am getting confused.

I have $10 million in shares that I have as a sign of my investment to start up this trust company. The capital is unencumbered. I have the shares and I go to the bank and I pledge half of it in order to borrow money.

Hon. Mr. Kwinter: You can do that.

Mr. Ferraro: I go broke and I have pledged it to the bank. Do they not, in essence, become equity owners to a greater degree than the Bank Act allows?

Hon. Mr. Kwinter: They own your shares but they cannot access that money unless they wind up the company. Right now, to use a corollary from the securities business, we have a situation where we have people who own securities companies and because of the fact that we are going to open up the market on June 30, there is a desire to acquire an interest. They are quoting the shares and putting them on the market for three or four times book value, which means that there is a market value that is different from the capital value.

That depends on the market. If you happen to have a share in a national trust, and I have no idea what the figures are, but I am sure their shares are worth more than what is represented in their capital account. You can do that on the understanding that you just cannot withdraw that capital, which is the capital base of the country.

Mr. Ferraro: The point I was getting at was back to the financial institution's ownership. If I pledged my shares and I am insolvent, does the bank not become an owner of the shares?

Hon. Mr. Kwinter: They become owners of the shares.

Mr. Ferraro: Technically they could hold more than 10 per cent. Are they then compelled to liquidate?

Ms. Parrish: They have to ask for permission if they own more than 10 per cent, and that would create a considerable market pressure. Nobody in his right mind would take a pledge for more than 10 per cent. If they had to realize on the security, they would have to go through the superintendent of deposit institutions to ask his permission to be registered in the share registry.

Certainly, in your example, a person could very well pledge half a million but that would be less than 10 per cent. But the likelihood that they would take the pledge--

Mr. Ferraro: What if they pledged $5 million?

Ms. Parrish: There is nothing in the act that stops them, except they would have trouble finding somebody who would do the pledging.

Hon. Mr. Kwinter: You could not pledge $5 million. What would happen is that under the Bank Act the bank could not own more than 10 per cent of the shares. The most they could own is $1 million, if there is a $10 million capitalization.

If you wanted to pledge $5 million, their answer to you would be no, not because they do not like the idea of $5 million but if they ever have to realize on that, they cannot own more than 10 per cent and $5 million would be 50 per cent of that company. That is the problem we have, so they would not lend you the money or take those as security because they could never realize on them.

Mr. McFadden: It seems to me that the problem we are up against, and what the objective of this legislation is, fundamentally, is to ensure an adequate capital base and ensure that whatever capital is in there is properly managed by the corporation with fit directors, in accordance with the law and with the power of the minister to step in if it is not.

I suppose the only area where there could be some worry here would not be with the banks. I think they are the least of our worries. The banks are not likely to lend $10 million against an interest that may at most be worth $1 million or where they are going to get into regulatory problems.

Mr. Ferraro: Tell the banks in British Columbia that.

Mr. McFadden: They might, but they are in other hands.

The only type of situation where Mr. Ferraro's situation could have some concern would seem to me to be if somebody got in with the loan sharks. Without the loan sharks realizing what they were into, they lent $5 million on shares that had considerably less value than that and, in fact, you would probably never have approved them as suitable.

In that case, there could be a problem in the company if the shareholder was compromised or went into bankruptcy because the loan sharks were trying to collect, and all they could grab were these shares. I suppose you could find a charge on the shares in the hands of undesirable people, who could use the courts, by way of injunction or something, to start affecting how those shares could be voted and so on. It could create a problem for the management of the company.

The difficulty we have is that anticipating that situation is very difficult. I do not know how you would ever manage to set it all out here. It seems to me that the problem Mr. Ferraro could get into is that there could be a thoroughly desirable owner who has a lot of assets but who may need to borrow money in order to put capital into a trust company. That owner may hypothecate all or a part of the assets with the bank or with some institution, with the institution being fully aware it cannot really grab it all, but at least it gives the institution some avenue that will be held. That person may be totally desirable and not overly stretched.

I do not think you would want to deprive a group of the right to own the shares because it is borrowing against the assets here, and I do not think the ministry wants to be going around snooping into every little transaction that is going on.

Mr. Ferraro: No. If I can interject here, you qualified it by saying somebody with a lot of assets. If that is the case, he is not necessarily going to have to pledge the shares as security. My concern is whether we should be or are concerned about the ownership of the shares. I realize the capital is undercut, but should we be concerned about what the individual owner can do with the shares, which is, in fact, ownership of the company?

Mr. McFadden: If they cannot be transferred--

Hon. Mr. Kwinter: What we do is, regardless of how the shares were acquired, if anyone gets more than 10 per cent of any of the shares, he has to meet our criteria as to fitness.

Mr. Ferraro: What do you mean by fitness? He would have ownership.

Hon. Mr. Kwinter: No. It does not matter if they are transferred or not. Even if you acquired them on the open market, once you get to the point where you control 10 per cent or more of the shares, you then fall into that category.

Mr. Ferraro: But in a situation where the shares are assigned as security, they are not transferred.

Hon. Mr. Kwinter: As long as they are assigned as security, I assume the beneficial owner is still--

Mr. Ferraro: What if he goes broke?

Hon. Mr. Kwinter: That is the point I was making about the bank. That is why the bank will not take as security anything more than 10 per cent, because if it ever has to realize on that security, it will be unable to do it.

Mr. Ferraro: What about a loan shark?

Mr. Chairman: I think these questions have been asked and I think we have some answers on the table. If they are not sufficient, you may wish to vote against the subsection or move an amendment.

Mr. Ferraro: No, I am hypothesizing.

Mr. Chairman: Is there any other discussion of clause 10(5)(b)? Shall that clause pass? Carried.

Shall subsection 10(5), as amended, carry? Carried.

Subsections 10(6) and (7) have not been amended. There is no proposal from the government. Shall those subsections, as they have come out of second reading, carry? Carried.

Subclause 10(8)(a)(i) has been amended. Previously, it read, "in the locality where the principal place of business of the corporation is to be located there exists a public benefit and advantage for the trust corporation or for an additional trust corporation." You can see that has been reduced in

wording. Is there any discussion? Shall subclause 10(8)(a)(i), as amended, carry? Carried.

There has been no proposal on subclause 10(8)(a)(ii) since second reading. Is there any discussion? Will it carry? Carried.

On subclause 10(8)(a)(iii), the proposal is to add, "and is fit as to character to own 10 per cent or more of such class of shares." Is there any discussion? Shall subclause 10(8)(a)(iii), as amended, carry?

Hon. Mr. Kwinter: That section also addresses your concern. If you take a look at it, it says, "...the adequacy of their financial resources and is fit as to character to own 10 per cent or more of such class of shares." Once you get to the point where you are over 10 per cent, that kicks in. The only time it does not is if you buy, as lots of people do, 10, 20 or 30 shares of a company just as a token purchase, and there is no criterion other than whether you can afford to buy them.

Mr. Chairman: Subclauses 10(8)(a)(iv) through (vi) remain unchanged from second reading. Is there any discussion? Shall they carry? Carried.

Shall clause 10(8)(a), as amended, carry? Carried.

In clause 10(8)(b), there is no proposed amendment. Is there any discussion? Shall clause 10(8)(b) carry? Carried.

Clause 10(8)(c) has been amended. I am not sure what the change is. It previously read, "to change the principal place of business of a provincial corporation unless it is shown to the satisfaction of the Lieutenant Governor in Council that in the locality where the proposed principal place of business is to be located there exists a public benefit and advantage for locating the principal place of business in the proposed location and the proposed plan of operations in the new location is feasible." I imagine that wording has been improved.

Hon. Mr. Kwinter: It has been improved because what this says really is that you cannot move in your own municipality without showing that it is going to improve your business. What we are talking about is if you move out of the municipality into another geographic area, you have to show that it is feasible. Whereas, under this thing, it would mean that you could not move across the street without getting approval.

Mr. Chairman: Shall clause 10(8)(c), as amended, carry? Carried.

Shall subsection 10(8), as amended, carry? Carried.

In subsections 10(9) through (11) there are no proposals for changes.

Mr. Ferraro: I believe the Canadian Bar Association--Ontario had a query about subsection 10(11).

Mr. Chairman: Yes, as is noted in your summary.

Mr. Ferraro: Can the ministry indicate its reaction to that concern?

Hon. Mr. Kwinter: It was felt that we required this as part of our constitutional position, and notwithstanding what they had asked for, we felt we had to keep it the way it was. So we have opposed that.

Mr. Ferraro: Their concern was that the depositors should be given preferred status in case of bankruptcy. Has that been addressed?

Ms. Parrish: If I may address that, essentially what the bar association said was that this section maintains the concept of the trust deposit for trust companies. They have said, in a number of places, that the trust deposit should be eliminated and replaced with the debtor-creditor relationship, which is how banks receive money. This is my understanding of the impact of their suggestion.

One of the points that we made in response was that to have a trust deposit is actually preferable for depositors because their assets are segregated from ordinary creditors, and if there is a bankruptcy, then they have priority. The bar association responded by saying, "You could fix that in the Bankruptcy Act or in the Winding-up Act." The comment we made was, "We suppose you could, except that is federal legislation." Since we cannot change the Bankruptcy Act, we feel that this still has a real validity for depositors and is also very consistent in many ways with what depositors think they get.

Mr. Epp: We may as well finish two more pages, and then we are finished with part II.

Mr. Chairman: Yes. Any other discussion of subsection 10(11)? Shall subsections 9, 10 and 11 carry? Carried.

Section 10, as amended, agreed to.

Mr. Chairman: Do you want to run through sections 11, 12 and 13, so we are finished with part II? It will just take a few seconds, I hope. There have been no amendments proposed on those three sections.

I am sorry. I should have brought to your attention that clause 11(1)(c) has been amended to add the word "limitée". That is a word that was added. Obviously, that word was not in the section as it came out of second reading.

Shall clause 11(1)(c), as amended, carry? Carried.

Section 11, as amended, agreed to.

Sections 12 and 13 agreed to.

Mr. Chairman: We have finished two parts. Thank you very much. See you tomorrow.

The committee adjourned at 6:03 p.m.

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

LOAN AND TRUST CORPORATIONS ACT

TUESDAY, MAY 12, 1987

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

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Mitchell, R. C. (Carleton PC) for Mr. Taylor
Partington, P. (Brock PC) for Miss Stephenson

Clerk: Carrozza, F.

Staff:
Revell, D. L., Legislative Counsel

Witnesses:

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Tuesday, May 12, 1987

The committee met at 3:37 p.m. in committee room 1.

LOAN AND TRUST CORPORATIONS ACT
(continued)

Consideration of Bill 116, An Act to revise the Loan and Trust Corporations Act.

Mr. Chairman: I see a quorum. There has been a suggestion made to me, and I am in the committee's hands, that the way we were handling this yesterday, with my drawing your attention to each government amendment--and there are, I am told, in excess of 150 of these amendments--is not necessary. I was told that I was drawing clarification questions as opposed to debate, which is what we should be doing in clause-by-clause, and I would concur with that comment.

In the alternative, it might be preferable to cluster sections or even take a whole part, such as part III, and simply ask if there are any sections in that part that anyone wishes to address. For instance, in part III, I note that there have been no submissions at all on any of the sections. There have been some government amendments in your consolidated book which you have had access to for some time now. Naturally, that would speed up things a little. I am in the committee's hands.

Are there any comments? Shall I presume that you concur?

Mr. Morin-Strom: I received a copy of Bill 116 in my office today, distributed by the pages. I do not know if this is a changed version or what it is all about. Why were these distributed to everyone today?

Mr. Chairman: They should have been distributed some time ago.

Mr. Morin-Strom: They were being distributed throughout the House today.

Mr. Revell: The one you received from the pages today would probably be the official version of the bill, representing the new first reading of it at the beginning of the current session in April. It has the original first reading date on it, but the new session number and so on. It is exactly the same as the Bill 116 you received when Bill 116 was given first reading last October or November. The one we should be working from is the committee reprint. You can virtually ignore that one.

Mr. Chairman: I have been carrying both so that I can bring to your attention what the government is proposing in the way of changes.

Part III in the new bill--

Mr. Haggerty: That is on page 36 of the bill I have.

Mr. Chairman: In the new bill.

Mr. Haggerty: I do not know if it is the new bill. I think it is the old one.

Mr. Chairman: Part III, section 14 through section 29, inclusive, up to page 64 in English, those sections include government proposals for amendments to sections 19, 20, 22, 23, 25, 26 and 28, and none of those proposals, or anything in second reading, was commented on by any of our witnesses. Does anyone wish to comment on anything in part III? If so, could you perhaps designate the specific section?

Mr. Morin-Strom: I feel a bit uncomfortable about going through this so quickly.

Mr. Chairman: All right. I want to hear that if you do.

Mr. Morin-Strom: I would prefer to go through them following the procedure we used yesterday.

Mr. Chairman: Are there other comments?

Mr. Haggerty: Maybe we should have an explanation of why the proposed amendments have been made. Can anyone give us that, so that we have a clear understanding that the intent is still there?

Mr. Chairman: A lot of these are clearing up minor things. If you want an explanation, it would be preferable to go back to the system we used yesterday, where I looked at section 19 and said: "Do you want an explanation of section 19? This is how we changed it."

Mr. Haggerty: I think that may give us some direction.

Mr. Morin-Strom: At least for those sections where there are changes from the original bill.

Mr. Offer: I think the suggestion to deal with chunks of sections arises from the fact that a motion was previously moved to adopt the extensive first group of motions as if they were read in at first reading. That is why you have another bill put forward. I was here at the time we passed that motion adopting all of those amendments. They were not accepted as passed, but accepted as if they had been read in, in the first instance, in that form.

To carry on, I think the chairman and the clerk are indicating we are moving along per section and then per further amendment.

Mr. Chairman: I was doing in clumps the sections in which there had been no proposals. Where there was a proposal, I was trying to explain it quickly.

Mr. McFadden: If I might speak to that, I do not think we should change our procedure now that we are part-way through. I think what got us in a sort of ponderous situation yesterday was going through each word under the definitions. That was a bit slow moving. However, it seems to me we should not switch our process part-way through consideration of a bill of so technical a nature. Where members have a question, I think if we do it in bulk, the tendency will be just to overlook everything.

While I do not have any question about this bill having been very carefully drafted and fully vetted with industry representatives and

representatives of the various professions who are interested, I still think it is prudent for the committee to go through it section by section. I imagine most sections will probably go through without a lot of debate, as we did yesterday.

I would be opposed to our changing the procedure part-way through consideration of this bill. I do not think it will necessarily prolong problems. In fact, it may shorten things potentially if we get into debate later. If some members feel they do not understand what we did earlier when we wind up at a later section, we may wind up reopening things. I suggest it would probably make more sense to go through the bill in such a way that everybody is familiar with what we have dealt with and with what we have passed.

Mr. Chairman: As Mr. McFadden pointed out, we certainly did ask the ministry to process a lot of the problems with industry representatives, and a lot of that has been done. Do you want to comment again, Mr. Offer?

Mr. Offer: No, except that, of course, this in the hands of the committee members.

Mr. Chairman: Are there any other comments? Then let us move back and do it the way we were doing it the last time. I take it that is the consensus I am hearing.

For sections 14 to 18 inclusive, no changes have been recommended.

Sections 14 to 18, inclusive, agreed to.

On section 19:

Mr. Chairman: Section 19 has been changed. I am looking at the old section and I see that in the old section there were five parts and there are now four parts. A subsection has been removed indicating, "Subsection 1 does not apply to an extraprovincial corporation unless under the law of the jurisdiction in which it is incorporated it has the power to amalgamate with a provincial corporation." That subsection has been removed and subsection 1 has been changed slightly.

Section 19, as amended, agreed to.

On section 20:

Mr. Chairman: Subsection 20(2) has been changed. The old subsection read, "No agreement for the amalgamation of corporations or the purchase or sale of the assets of the corporation shall take effect until all approvals required by this part have been given." That has been changed to the way you have it written in front of you.

Shall subsection 20(2) carry? Carried.

To follow this in proper order, subsection 20(1) has not been changed. Shall subsection 20(1) carry? Carried.

Clauses (3)(e) and (3)(ea): In the bill as it came out of the Legislature, clause (e) read, "the manner of converting the shares of the amalgamating corporations into shares of the amalgamated corporation." We now have the longer statement, clauses (e) and (ea).

Shall subsection 20(3) carry? Carried.

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Subsection 20(3a) is a new proposed amendment; it was not in the original. Subsections 20(4) and 20(5) have been changed. Is there any discussion of subsections (3a), (4) and (5)? Shall subsections 20(3a), 20(4) and 20(5) carry? Carried.

Subsection 20(6) is unchanged. Shall subsection 20(6) carry? Carried.

Section 20, as amended, agreed to.

Mr. Chairman: Section 21 has not been altered. Is there any discussion? Shall section 21 carry?

Section 21 agreed to.

On section 22:

Mr. Chairman: Section 22: the words "entitled to vote thereon" have been added in subsection 22(1). Is there any discussion?

Section 22, as amended, agreed to.

On section 23:

Mr. Chairman: No change in subsections 23(1) through (3). Is there any discussion? Shall subsections 23(1) to (3) carry? Carried.

Subclause 23(4)(a)(iii) has added to it the words "and is fit as to character to own 10 per cent or more of such class of shares."

Mr. McFadden: I have a question with regard to this section. Under subclause 23(4)(a)(i), one of the criteria being looked at, of course, is "there exists a public benefit and advantage to the amalgamation of the corporations" and then subclause 23(4)(b)(i) reads, "there exists a public benefit and advantage if the purchase and sale is completed."

I wonder if the ministry could indicate the kind of criteria it would be looking for in evaluating those particular tests. Are we talking here about competition, consumer protection? What exactly would you be looking for when you are evaluating whether a purchase and sale would be "a public benefit and advantage"?

Mr. Wilbee: I think the sort of things we would be looking for would be that it would not limit unduly the amount of competition, that it may not eliminate somehow the provision of services in a certain area. There are possibly other specific criteria that may emerge on specific cases. I think it is deliberately left a little vague to allow some discretion for situations that might arise that we may not be able to anticipate.

I think the basic criteria are that the people now benefiting from the existence of the company would not be deprived of service in some way and competition would not be unduly limited by such amalgamation or a purchase and sale of assets. Those would be the two primary concerns we would have in looking at this kind of proposal.

Mr. Morin-Strom: I have some serious concerns with that statement we just heard. In my mind, it contradicts what the legislation states. The legislation states, "there exists a public benefit and advantage." It does not state that there is not a disadvantage. What we have heard is that the criterion is going to be that there will be no negative impact, but, in fact, the criterion should be that there is some positive benefit. I think the criterion should be a measurement of where that positive benefit is going to be, not the lack of a negative impact.

Mr. Chairman: So you prefer what is written?

Mr. Morin-Strom: I like what is written, but I want to hear a little better criterion than what we have just heard.

Mr. Chairman: Presumably, you can always take the ministry to court.

Mr. Morin-Strom: It could be positive in terms of service to the public, greater assurance of the reduced financial risks to someone who has savings in an institution or, as a result of the amalgamation, the joint firms are going to be able to open up more offices or provide new services they did not have previously. I hope there would be something positive submitted by the firms in justification for the amalgamation.

Mr. Chairman: Are there any further comments from the ministry?

Mr. Wilbee: I should add to that--and the point is well taken--that I think my words may have been a bit negative. I guess I take it for granted that where there is an amalgamation or a purchase and sale of assets, this normally occurs when one of the institutions involved is in some difficulty. There is obviously--I probably should have mentioned that--a public benefit to be gained in not having that institution go out of business in the first place.

My remarks were centred around the possible offsetting negative effect if an amalgamation or a purchase and sale of assets were to result in a disadvantage to some parts of the society; that the benefit that would be there might be somehow lost or negated. I started from the assumption that there would certainly be a public benefit involved if a deal were made and one of the institutions was troubled. I took that as a given, and perhaps I should not have.

Once you get past that, then you have to see what the effect is on the clientele, whether the clients are going to be somehow deprived of some service. So, yes, there would certainly have to be a benefit, and I think there is an implied benefit that the ailing company is somehow saved or taken out of its misery by the healthy company.

Mr. Morin-Strom: That would perhaps be the focus in the area of one of the firms being an ailing company, but I do not believe this is referring only to amalgamations where one of the companies is in trouble. I would take it that, in any case, the companies would have to demonstrate, in their submission for approval of the amalgamation, that there is some positive impact on their clientele and on the services they will be providing.

Mr. Chairman: As a lawyer, that is certainly the way I would read it.

Ms. Parrish: Certainly, the onus is on the parties to the amalgamation to demonstrate to the satisfaction of the Lieutenant Governor in Council that there is a public advantage involved. I think that Mr. Wilbee was

mentioning one public advantage as being greater economic stability where there is a troubled company. Where companies are not troubled, there are many other public advantages that might be put forward, such as a greater ability to provide services all over the province, which is an advantage in a mobile work force, etc. But each company on each application would have to demonstrate that its amalgamation or purchase and sale satisfied that test.

Mr. Partington: Just as a matter of interest, if you had two healthy, vibrant, growing companies and the only purpose of one in buying out the other or in amalgamating was to become bigger or more profitable, would you deem in the public good the mere fact that you would have one stronger company? Considering that there are no negative aspects to it, you might not approve it.

Mr. Wilbee: As Ms. Parrish said, under the act, they would have to make a case that there was a public benefit. The case would have to be made; otherwise, we would not be able to recommend it for approval.

Mr. Partington: I do not understand it, but that is fine.

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Mr. McFadden: I do have one question in terms of the operating situation now within the trust industry. In recent years, because of difficulties in the industry, there have really been no licences issued, virtually nothing in the way of new licences. We have had a lot of mergers taking place. A number of them you could loosely describe as shotgun marriages where assets from ailing companies got put in with viable companies in order to salvage whatever there was to salvage.

Given the trend in terms of the financial services industry, is it your view that over the next 10 to 20 years you are likely to see larger units rather than a proliferation of small ones? What is your anticipation right now? Are we likely to see a continuing urge towards amalgamation, or do you see a proliferation, once this act gets through, of a lot more licences being created locally, or do you not think that is likely to happen?

Mr. Wilbee: I find it very difficult to be in the role of a prognosticator for the industry. There is an obvious trend towards bigness. Bigness is there, and I would consider that large companies will continue to want to grow, and to grow by acquisition and merger as well as by straight growth. On the other hand, we have seen quite a move towards smaller companies serving a particular niche in the service area. The ingenuity of the free market in finding new niches that most of us would not have thought even existed is always astonishing.

While I do not consider myself a forecaster and would not want to be held to any of this, my guess is that both the things you said will happen. There will be more mergers. There will be bigger trust companies and bigger corporate conglomerates, but there will also be more smaller speciality or niche operators in the business, which will probably increase the overall number. But I would not say it is an either/or situation; it is both/and. That is just my opinion, and I hasten to add I have no magic knowledge that would support that.

Mr. McFadden: It certainly can depend on an awful lot of factors, from interest rates to just basically the presence of entrepreneurs who want to go into this business.

Mr. Haggerty: We make reference to the superintendent who may have cause to have somebody come before him to justify any amalgamation, and then the next safety valve is the cabinet or the Lieutenant Governor. Does the Ontario Securities Commission play any part as another safety check in the system? I cannot see it in there, but we are dealing with voting shares and nonvoting shares. I guess we would be dealing with that. Does the securities commission play any role in this as another safety check?

Mr. Wilbee: If it is a publicly traded company, which most large companies are, the Ontario Securities Commission would have to approve these arrangements, but in the case of smaller, privately held companies, it would not have a role. That is my understanding. In the smaller companies, it would be primarily through the vehicle of this act.

Mr. Haggerty: What do you mean by a smaller company? What are we dealing with in, say, dollars? How do you define a small corporation as opposed to a large one? They are dealing with public trust, you might say.

Mr. Wilbee: I guess the size is not really the governing factor. It is the ownership, whether it is privately held or publicly traded. Some of the privately held ones are large on anybody's scale. For the most part, the largest trust companies are publicly traded and would be governed by the securities commission, but any trust companies that are privately held would not be.

Mr. Haggerty: Why would that not be defined in the act, if we are looking for changes in here to provide safety checks in the system that we do not have? Corruption has followed a number of cases over a number of years in the industries, not all industries, but there have been some that have gone into default.

Mr. Wilbee: I am sorry. The question is, why would the act not specify--

Mr. Haggerty: Why would they not define it in the act and bring in the securities commission? It deals with the larger corporations but the smaller ones are exempt. There just does not seem to be any continuity, you might say, in providing an additional check valve in the system.

Ms. Parrish: The mandate of the securities commission is to deal with offering corporations. If it is an offering corporation, then the securities commission will deal with it. If the company is not an offering corporation, the securities commission, by virtue of the Securities Act, does not deal with it. The Securities Act does not distinguish between offering corporations that are mining companies and offering corporations that are trust companies. That is why we have a basic requirement here.

I would note that although the regulation and requirements of the Securities Act are very high and very stringent, they are mostly disclosure requirements, whereas here we have an actual approval mechanism that says, "No matter what you have disclosed to anybody in the world, you have to have the approval of the Lieutenant Governor in Council in order to merge."

In many ways, these requirements are at a higher level than the straight Securities Act, but the Securities Act is an additional requirement for those companies that are offering companies. It is the same requirement for any offering company. There is no special requirement for loan and trust companies; it is for any offering company.

Mr. Haggerty: The chairman of the securities commission appeared before the committee here. I think he did flag something, but I just cannot recall it.

Mr. Chairman: He was not appearing with regard to this bill, though. I do not think this bill really deals with that. He spoke to us on corporate concentration.

Mr. Haggerty: Yes, that is what I thought, but I thought he had flagged something in that particular area. I could be wrong and I do not have the transcripts. I just raised the question.

Mr. Chairman: We had a discussion on subsection 23(4).

Shall subsection 23(4) carry? Carried.

Sections 23 and 24 agreed to.

On section 25:

Mr. Chairman: Subsection 25(1) has been amended, but I am not sure in what respect. Any discussion on subsection 25(1)? Prior to the amendment it read:

"(1) In the case of the purchase of the assets of a corporation that has been approved by the Lieutenant Governor in Council, the assets of the vendor corporation become vested in the purchasing corporation on and from the date of approval without any further conveyance, and the purchasing corporation thereupon becomes and is responsible for the liabilities of the vendor corporation."

Shall subsection 25(1) carry? Carried.

Subsection 25(2) is unchanged. Any discussion?

Shall subsection 25(2) carry? Carried.

Section 25, as amended, agreed to.

On section 26:

Mr. Chairman: Subsection 26(1) is unchanged. Any discussion?

Shall subsection 26(1) carry? Carried.

Subsection 26(2) has been amended, as has subsection 26(3). It previously read:

"(2) An agreement made or purporting to be made under this act to purchase the assets of a corporation shall be deemed to contain a covenant and agreement with each creditor of the vendor corporation that the purchasing corporation will pay to the creditor the amount of the vendor corporation's indebtedness to the creditor at such time and place as the amount would have been payable had the agreement to purchase not been made."

Subsection 26(3) used to read:

"(3) Where the Lieutenant Governor in Council approves an agreement for

the sale of the assets of a corporation, the vendor corporation is, from the date of approval, dissolved, except so far as is necessary to give full effect to the agreement."

Any discussion on subsections 2 or 3? Shall subsections 26(2) and 26(3) carry? Carried.

Section 26, as amended, agreed to.

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Section 27 agreed to.

On section 28:

Mr. Chairman: Subparagraph 28(1)2iii has been amended by the addition of the words, "and is fit as to character to own 10 per cent or more of such class of shares."

Shall subsection 28(1) carry? Carried.

Mr. Morin-Strom: I wonder why the 67 per cent is specified in subsection 1? Why would a figure of 67 per cent be picked rather than 50 per cent?

Mr. Chairman: Ministry? That is in the opening part of subsection 1.

Mr. Morin-Strom: Yes. It says, "a corporation may purchase not less than 67 per cent of the outstanding shares."

Ms. Parrish: The normal rule is that trust companies or loan corporations cannot buy the shares of other loan corporations or trust companies, and this is an exception to the rule. It says that you can buy these shares in preparation for an ultimate amalgamation.

As a result, the idea was to make them buy a substantial proportion of the shares in preparation for an ultimate amalgamation. They are only allowed to hold these shares for a limited time because the general rule is that loan and trust corporations are not allowed to own, for example, 25 per cent of the shares of another loan or trust corporation. They either have to own it as a subsidiary or they have to merge with it, or whatever. This is an exception and there is nothing magic about the 67 figure; it is just intended to be a substantial figure, a lot as opposed to just barely half.

Mr. Morin-Strom: In normal circumstances what does this legislation say they can own? Did you just say up to 25?

Ms. Parrish: No. Normally, they cannot own shares in a loan or trust corporation.

Mr. Morin-Strom: They cannot own, period.

Ms. Parrish: No. They cannot buy the shares of another loan or trust corporation. That is provided for in a later section in the act.

Mr. Morin-Strom: So when they make a purchase, they have to purchase 67 per cent.

Ms. Parrish: With the intent of owning it as a subsidiary or--

Mr. Morin-Strom: Is there a time frame they have to do that within or do they have to purchase 67 per cent of the shares simultaneously with the purchase?

Ms. Parrish: They have to do it at once. When they make their purchase they have to purchase a block, all 67 per cent for this particular transaction. This is in addition to what they may do under section 19.

Mr. Morin-Strom: When they make that block purchase, are there provisions in here to ensure that that purchase price is offered to every shareholder of the corporation? In other words, that block has been put together and minority shareholders are not assured that they will be offered that same price.

Ms. Parrish: In the Shares and Shareholders section there is an entire system that deals with minority shares and so on, and essentially we incorporate the same provisions as are in the Ontario Business Corporations Act. I am trying to find the sections that deal with that.

Essentially, the rules are basically what they are in the Business Corporations Act that deal with oppression, remedies and so on, and there are the same remedies in the act as there are under the Business Corporations Act. If a shareholder has been oppressed by having a--

Mr. Morin-Strom: Do we have the same kind of assurances as we have on a stock market in major takeovers that when a bid is for a major takeover, that bid has to be extended to all minority shareholders as well?

Ms. Parrish: If it is an offering corporation, then it is subject to the Securities Act, so if it is on a stock exchange, then it is subject to the Securities Act and all the normal rules for minority shareholder protection are in place.

In addition to that, in part IV on shareholders there is an entire scheme that deals with shareholder protection that has the same protection for minority shareholders as exists in the Business Corporations Act.

I am sorry. I may not have understood your question.

Mr. Morin-Strom: I want a clarification. In other words, you are saying those protections are in place and minority shareholders, in a major takeover of this type, are in fact protected?

Ms. Parrish: What I am saying is that they have the same protection as anybody else would have under the Securities Act or the Business Corporations Act. There is no special code of protection for people who are minority shareholders of trust companies. They get the same protection as people get under the Securities Act. For instance, within a certain period of time, if you are a minority shareholder and there has been a takeover bid and there has been a certain price, you have the right to get the same price as the persons who purchased as majority shareholders.

Mr. Morin-Strom: That is in here somewhere.

Ms. Parrish: It is actually in the Securities Act because if it is an offering corporation, it is governed under the Securities Act, but in addition--

Mr. Morin-Strom: You put a qualifier before it. As long as it is a public company traded under the--I cannot remember how you clarified it, but you did put a qualifier on it, so it may not apply to a private company.

Ms. Parrish: For private companies, there are provisions that deal with shareholders. I am trying to find the relevant sections. They are in part IV.

Mr. Chairman: Is it part V, sections 40 to 42?

Ms. Parrish: Yes, it is part V, shares and shareholders. There is a whole part in there that deals with how you can call meetings and what protections you have. It incorporates parts of the Business Practices Act that deal with squeeze-outs, for example. What happens if someone owns 90 per cent of the shares, so you are a 10 per cent minority shareholder? Do you have the right to put it to the majority shareholder that he must buy out your shares at the same price he purchased the voting block? These are all incorporated into this act. If you are a minority shareholder in that situation, you have the same remedies you would have under the Business Corporations Act to force the majority shareholder, if there has been a recent takeover, to give you the same price and so on.

Mr. Morin-Strom: Perhaps we will look at those provisions later.

Ms. Parrish: I guess what I am trying to say is that there is no higher standard for shareholders under this act than there is under the normal law of Ontario.

Interjection: And no lower.

Ms. Parrish: And no lower. It is the same standard.

Mr. Chairman: Is there any other discussion of subsection 28(1)? Shall subsection 28(1) carry? Carried.

In subsection 28(2), the word "securities" has been inserted twice where in the first draft it said "voting shares." In other words, it now says, "cash or securities." is there any discussion of subsection 28(2)? Shall subsection 28(2) carry? Carried.

Subsections 3 through 5 are unchanged. Is there any discussion of subsections 3 to 5, inclusive? Shall subsections 3 to 5, inclusive, carry? Carried.

Section 28, as amended, agreed to.

Section 29 agreed to.

1620

On section 30:

Mr. Chairman: We are through part III. In part IV, registration, section 30 has been amended by adding the French in brackets after the English, and in the French version the English--no, it was already in the English, so it is only the English version that has been amended. I am looking at subsection 30(2).

Let us start with subsection 30(1), which is unchanged. Is there any discussion of that? Shall subsection 30(1) carry? Carried.

Subsection 30(2), as amended: Is there any discussion? Shall it carry? Carried.

Subsections 30(3) and 30(4) are unchanged. Is there any discussion? Shall they carry? Carried.

Clause 30(5)(b) used to read "the fact that the registration of a corporation has been revoked or has not been renewed." Now we have taken out the words "or has not been renewed."

Is there any discussion of subsection 30(5)? Shall subsection 30(5) carry? Carried.

Section 30, as amended, agreed to.

On section 31:

Mr. Chairman: Section 31, you will note, was commented upon by the Trust Companies Association of Canada with regard to a subsection 10 it wants added.

Prior to that, though, subsections 1 through 7, inclusive, are unchanged. Is there any discussion of subsections 1 through 7? Shall subsections 31(1) through 31(7) carry? Carried.

Subsection 31(8): The last part of that after "Canada Deposit Insurance Corpoation" used to read "or that the corporation's Canadian currency deposits will be insured by some other similar public agency approved by the superintendent up to the maximum amounts permitted by the agency." Is there any discussion of subsection 31(8)? Shall subsection 31(8) carry? Carried.

Subsection 31(9) is unchanged. Shall subsection 31(9) carry? Carried.

Mr. McFadden: I have just one comment in relation to a point you made. The Trust Companies Association of Canada did recommend the addition of a subsection 10 to require as well that an applicant for registration as a trust corporation would have to be accompanied by evidence of membership in the Trust Companies Association of Canada. I know the view of the association is that it tends to police its members and that membership gives a further additional kind of test that a company would have to meet: It would have to be accepted within the industry. I assume there is some peer pressure and some peer review in that, along of course with what would be required under this act and under any other regulatory authority.

I would like to ask the ministry why that particular recommendation was not included in the ministry's motions. Is there a reason that was not included among the various changes you adopted from various groups that made submissions?

Mr. Davies: There were recommendations from groups other than the Trust Companies Association of Canada that argued just the opposite side of this, saying that they did not feel it appropriate that they should be compelled to join what they view as a trade association that has no true self-regulatory function and that the actual protections for depositors and other protections are embodied in the statute itself and are not enriched in

any sense by membership in the Trust Companies Association of Canada. So the proposal was to leave that as voluntary effort on the part of individual trust companies. If they choose to join the Trust Companies Association of Canada and participate in their mutual efforts to assist one another, that is the way it will be.

Mr. McFadden: Are you aware at this time what percentage of provincially licensed trust companies now are members of this association? Have you got the figures on that?

Mr. Davies: Perhaps one of my colleagues might know. There is a very significant, major trust company that is not a member.

Mr. Ashe: Canada Trust?

Mr. Davies: Canada Trust. In terms of numbers, the volume of trust company business, that would be a significant hole in their membership. In terms of the actual numbers of companies, I would hazard a guess that the bulk of companies are members of the Trust Companies Association of Canada at present.

Mr. McFadden: Are you familiar with why Canada Trust chose not to join? Are they just not joiners? Do they not like the fees?

Mr. Davies: I am afraid I really am not familiar with their reasoning on that.

Mr. Epp: Mr. Somerville indicated a few weeks ago when he was before the committee that Canada Trust was at one time a member.

Mr. Davies: At one stage it was a member, yes.

Mr. Epp: I am sure they can afford to be members. There must be some other reason.

Mr. McFadden: Yes, I would assume they could afford the dues. Otherwise, we had better investigate them in a hurry.

I guess what you are saying, in effect, is that if we were to include that section under this act, either Canada Trust would have to become a member of this association immediately or it potentially could lose its licence to carry on in Ontario because it would cease to meet one of the criteria of this act.

Mr. Davies: That is correct.

Section 31, as amended, agreed to.

Section 32 agreed to.

On section 33:

Mr. Chairman: In section 33, clauses (a) through (c) are unchanged. Shall section 33, clauses (a) through (c), carry? Carried.

In subclause 33(d)(iii), they have added the term "and is fit as to character to own 10 per cent or more of such class of shares." Is there any discussion? Shall clause 33(d), as amended, carry? Carried.

Clause 33(e) is unchanged. Is there any discussion? Shall clause 33(e) carry? Carried.

Section 33, as amended, agreed to.

Sections 34 to 36, inclusive, agreed to.

On section 37:

Mr. Chairman: Subsection 37(1) has added the word "limitée" in both the English and French versions.

Mr. Revell: If we are pointing out the amendments here, there is an amendment in the French version only in clause 37(1)(b).

Mr. Chairman: I am sorry; you are right. I should be reading both languages at once.

Mr. Morin-Strom: I have been working through this whole thing assuming we are doing the approvals of the English version only and that we are not directly addressing the French version. I hope we are not presuming that we have been approving every word of the French all the way through. I hope you are going to ask us to make rulings on changes to the French version individually.

Mr. Chairman: Were you here when this was discussed yesterday?

Mr. Morin-Strom: Yes, this is my interpretation of what was going on. We are going through the English version of this and approving it. That is what this committee is going to approve.

Mr. Chairman: What is it you are expecting the committee to do when it gets finished with the English version?

Mr. Morin-Strom: I do not know. At some point we have to address that within this committee. We have never had a bilingual bill here before. I want to make it clear that as far as I am concerned we are approving the English version.

1630

Mr. Epp: As I understand it, we are approving the English version and since most of us are not competent in French--I am not sure we are all competent in English either--to indicate whether it is an accurate translation at all, we are assuming legislative counsel is doing an accurate job. From my standpoint, that is an assumption I have to make.

Mr. Chairman: That is the chair's understanding of what we are doing. In that sense, I suppose we do not need to take cognizance of the amendments proposed in French.

Mr. Mitchell: It would be logical that legislative counsel would ensure that any amendments we make in dealing with one are sufficiently transposed or transcribed into the other.

Mr. Epp: To take it one step further, if there was any question later as to which version was the one that we adopted, if there was some problem in the translation, it was the English.

Mr. Mitchell: Exactly.

Mr. Chairman: That is the chair's understanding of what we are doing. It is probably my fault for even making reference to the French version. Is that satisfactory?

Mr. Mitchell: I was not here yesterday, but I assume that is logical.

Mr. Revell: I do not want to slow down the proceedings, but the committee must understand that both versions of this bill are equally authoritative. It was introduced bilingually in the House and has been printed and circulated bilingually. When the bill is reported back to the House, the law is that both versions of this bill are equally authoritative.

One of the reasons for having the bilingual facilities that the House is developing, including bilingual capability in the office of legislative counsel, is to carry out the instructions of the House in both languages. I think it is a given that not everybody in the Legislature is bilingual. We have members in the House who are unilingual in English and we have members who themselves would admit that, while they are bilingual, their language of work is French. There are people who read the French version rather than the English.

Admittedly, it does involve a certain amount of faith. If people think we are dealing with only the English version of the bill, that is not the way it operates ultimately.

Mr. Chairman: I want to make sure that counsel is comfortable with this.

Mr. Revell: Yes, there is no problem at all with the way the committee is handling it. We must remember that this bill has been circulated by the normal procedures of circulation. Mr. Davies can confirm this, but as far as I know this bill was submitted to the equivalent department in Quebec, which would review the French-language version.

Mr. Davies: Yes.

Mr. Revell: It was also submitted to our counterparts in New Brunswick, which is bilingual, and to other jurisdictions. It has been reviewed. The French versions have been out on the street.

Mr. Chairman: I have three names and I hope we do not get into too long a debate on this issue: Mr. Morin-Strom, Mr. Mitchell and Mr. Epp.

Mr. Morin-Strom: We are getting back into a very important issue here. We are setting a precedent in passing the first bilingual bill in this province. This is what somebody suggested yesterday. Let us not get into that; let us just talk about what we are doing here. As far as I am concerned, we are approving the English version of the law. If we want to approve the French version, I do not feel competent to do it. I do not want to say I have approved the French version of the law. I do not believe the committee has approved the French version of the law.

If we want to do that, I suggest the committee might have to hire independent staff competent in French and able to understand the legislation to be able to interpret whether in fact that translation has been accurate as well. I prefer the interpretation that we are approving the English version

and that is the authoritative version coming out of this committee. If at some date in the future, the judicial system has to look into what the exact meaning of words were and what intention we had on them, it would come out of our discussion that occurred in English.

Mr. Chairman: I remind you of the comments of legislative counsel that the judicial system is not likely to read this Hansard but rather to adopt the law that says the two versions are equally powerful.

Mr. Mitchell: Quite frankly, I accept the legislative counsel's position. When I substituted on this committee today, I did not expect to get into any discussion such as this. I was not aware of what you did yesterday, but to me it seems quite legitimate that we deal with this and take what legislative counsel has assured us is an accurate French reproduction of the English side that we are approving in the bill.

Mr. Epp: I accept what has been said. I accept what the legislative counsel has said. I think the bottom line is that both versions are equal, but the English is more equal than the French. I am not trying to be political on it, but that is what we are passing. If there is any dispute, the English has to be the first version. I cannot accept the fact that if this goes to court or anything of that nature, they will not in any way take into consideration what the members of the committee have said. I do not accept that. I think the judge, if he were to grant a version of that, would be at fault. Let us proceed.

Mr. Chairman: We were at subsection 37(1), the word "limitée" being added. The other information was also given to us. Is there any further discussion on subsection 37(1)? Shall subsection 37(1) carry? Carried.

Subsections 37(2) through 37(5), inclusive, are unchanged. Is there any discussion of subsections 37(2) through 37(5)? Shall subsections 37(2) to subsection 37(5), inclusive, carry? Carried.

Section 37, as amended, agreed to.

On section 38:

Mr. Chairman: Section 38 has apparently been amended. It is a completely new section. Is there any discussion of section 38? When I say completely new, there was a section 38 there before but it has been rewritten completely.

Section 38, as amended, agreed to.

On section 39:

Mr. Chairman: Subsection 39(1) and 39(1a) are in your book as indicated and they are rewritten. Then there are new subsections 39(2) and 39(3) that were distributed to you yesterday. There are also comments on section 39 that you should be taking note of from the Canadian Life and Health Insurance Association, the Canadian Bar Association--Ontario and the Trust Companies Association of Canada, which were given to you yesterday.

Is there any discussion of subsection 39(1)? Shall subsection 39(1) carry? Carried.

Is there any discussion of subsection 39(1a)? Shall subsection 39(1a) carry? Carried.

Subsection 39(2) is this document you were given yesterday. Is there any discussion of subsection 39(2)? Shall subsection 39(2) carry? Carried.

Subsection 39(3) is also in the addendum you were given yesterday for the first time. Shall subsection 39(3) carry? Carried.

Section 39, as amended, agreed to.

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Mr. Chairman: We have finished part IV. In part V, if I am not mistaken, no amendments have been proposed to sections 40 to 58 inclusive. I believe this is where the block can come in, as I understand the motion.

Sections 40 to 58, inclusive, agreed to.

On section 59:

Mr. Chairman: Section 59 has been amended. It now has a subsection (1) with "associates of the nonresident" having just two meanings, whereas it used to have five. The meaning of "nonresident" is also set out, which was not the case before. There is a substantial change in subsection 59(1).

Is there any discussion of subsection 59(1)? Shall subsection 59(1) carry? Carried.

Subsection 59(2) used to read, in the second line, "a shareholder shall be deemed to be associated." That has been changed to read "a shareholder is associated."

Is there any discussion of subsection 59(2)? Shall subsection 59(2) carry? Carried.

Subsection 59(3) and (4) are unchanged. Is there any discussion of subsections 59(3) or (4)? Shall subsections 59(3) and (4) carry? Carried.

Subsection 59(5) is entirely new. Is there any discussion of subsection 59(5)? Shall subsection 59(5) carry? Carried?

Section 59, as amended, agreed to.

On section 60:

Mr. Chairman: Subsection 60(1) is unchanged. Is there any discussion of it? Shall subsection 60(1) carry? Carried.

Subsection 60(2) regarding exceptions has been completely rewritten. Is there any discussion? Shall subsection 69(2) carry? Carried.

In subsection 60(3), after the word "shares" in the third to last line, the last phrase used to read, "the entry thereof in the securities register would be required, under subsection (1), to be refused by the directors." Is there any discussion of subsection 60(3)? Shall subsection 60(3) carry? Carried.

Subsection 60(4) is unchanged. Is there any discussion? Shall subsection 60(4) carry? Carried.

Section 60, as amended, agreed to.

On section 61:

Mr. Chairman: Subsections 61(1) through (4), inclusive, are unchanged. Shall subsections 61(1) to (4), inclusive, carry? Carried.

Subsection 61(4a) is entirely new. Is there any discussion of subsection 61(4a)? Shall subsection 61(4a) carry? Carried.

Subsections 61(5) and (6) are unchanged. Is there any discussion of subsections 61(5) and (6)? Shall subsections 61(5) and 61(6) carry? Carried.

Section 61, as amended, agreed to.

On section 62:

Mr. Chairman: Section 62 is unchanged. An amendment to section 62 was proposed yesterday by the ministry. It was distributed yesterday. Is there any discussion of section 62?

Section 62, as amended, agreed to.

On section 63:

Mr. Chairman: You should take note of the fact that we deferred discussion of subsection 2(7) until we looked at sections 62 to 69. The chair proposes that we work through sections 62 to 69 and then look at subsection 2(7).

Section 62 is carried. Perhaps I should have reminded you that there are comments in Ms. Evans's research. There are comments from Canadian Deposit Securities Ltd. regarding section 61.

With regard to section 63, there are comments from the Canadian Bar Association and Canadian Deposit Securities Ltd. An amendment is proposed to section 63, new subsection 63(1c). That amendment was handed out to us yesterday in loose leaf. Clauses 63(1)(a) and 63(1)(b) are unchanged. Carried. Is there any discussion of subsections 63(1a) and 63(1b)?

Shall subsections 63(1a) and 63(1b) carry? Carried.

Shall subsection 63(1c) carry? Carried.

We now have subsections 63(1), 63(1a), 63(1b) and 63(1c). Subsections 63(2) through (4), inclusive, are unchanged. Shall subsections 63(2) through (4), inclusive, carry? Carried.

Section 63, as amended, agreed to.

On section 64:

Mr. Chairman: An amendment was proposed to subsection 64 by the

ministry and distributed yesterday in loose leaf. Is there any discussion of section 64?

Section 64, as amended, agreed to.

Section 65 to 69, inclusive, agreed to.

1650

On section 2:

Mr. Chairman: We now will return to section 2. Yesterday we were dealing with subsection 2(7), which is found on page 18 of your document. Is there any further discussion of subsection 2(7), now that we have concluded discussion of sections 62 to 69? Shall subsection 2(7) carry? Carried.

We discussed the previous six subsections yesterday.

Section 2, as amended, agreed to.

Mr. Chairman: It is much less combative when the minister is not here or maybe it is because Mr. Ferraro is not here.

Sections 70 to 77, inclusive, are unchanged. Is there any discussion of sections 70 to 77, inclusive?

Sections 70 to 77, inclusive, agreed to.

On section 78:

Mr. Chairman: Subsection 78(1) is unchanged. Is there any discussion of subsection 78(1)? Shall subsection 78(1) carry? Carried.

The preamble to subsection 78(2) used to read:

"(2) Where a provincial corporation fixes a record date under subsection 73(2), a person named in the list prepared under clause (1)(a), subject to sections 59 to 67, is entitled to vote the shares shown opposite the person's name at the meeting to which the list relates, except to the extent that...."

Is there any discussion of the amendment to subsection 78(2)? Shall subsection 78(2), as amended, carry? Carried.

The subsection 78(3) preamble used to read, "Where a provincial corporation does not fix a record under...," using the same section numbers, etc., as before. It has been changed as you have it written in front of you.

Shall subsection 78(3) carry? Carried.

Subsection 78(4) is unchanged. Is there any discussion? Shall subsection 78(4) carry? Carried.

Section 78, as amended, agreed to.

Section 79 agreed to.

On section 80:

Mr. Chairman: Subsection 80(1) is changed. It used to read:

"(1) Each common share of a provincial corporation entitles the holder thereof to one vote at all meetings of shareholders."

It now is as you have it in front of you. Is there any discussion of subsection 80(1)? Shall subsection 80(1) carry? Carried.

Subsection 80(2) has been removed. I will read it. It used to read:

"(2) Unless the instrument of incorporation otherwise provides, shares of a provincial corporation that are not common shares entitle the holder thereof to vote at all meetings of shareholders."

The government is proposing that subsection be removed. Do we vote that down then?

Clerk of the Committee: That really has been removed.

Mr. Chairman: That is right. Of course. It is in the government motion, so there is no discussion.

Mr. Haggerty: What section is that?

Mr. Chairman: Subsection 80(2). It is no longer in. I guess I do not need to--

Mr. Haggerty: You will have to change all the numbering.

Mr. Chairman: That will automatically happen.

All right. I do not ask for anything to be carried.

Subsections 80(3), (4) and (5) are unchanged. Is there any discussion of subsections 80(3), (4) and (5)? Shall subsections 80(3), (4) and (5) carry? Carried.

Section 80, as amended, agreed to.

Sections 81 to 85, inclusive, agreed to.

On section 86:

Mr. Chairman: Section 86 has been changed. It used to read, "Part VIII of the Business Corporations Act, 1982 applies with necessary modifications with respect to every provincial corporation as if it were a corporation incorporated under that act." It has to do with some of our earlier discussions.

Section 86, as amended, agreed to.

Sections 87 and 88 agreed to.

On section 89:

Mr. Chairman: There has been an amendment to section 89.

Mr. Haggerty: There are two amendments. Neither one of the movers is here, though. What do we do?

Mr. Chairman: That is correct. I think we indicated to Mr. McFadden we would not discuss it until he returns.

Mr. Partington: I suppose he asked that it be stood down until tomorrow. He will not be back tonight.

Mr. Haggerty: What about the one for Mr. Ferraro?

Mr. Chairman: I am not in receipt of one for Mr. Ferraro.

Mr. Haggerty: I have copies of two amendments here.

Mr. Chairman: I am sorry. I think it would be fair to put off all our discussion on section 89 until both the movers are here. Neither of them is here at the moment.

Sections 90 to 95, inclusive, are unchanged. Is there any discussion of sections 90 through 95?

Sections 90 to 95, inclusive, agreed to.

On section 96:

Mr. Chairman: Is there any discussion of subsections 96(1) to (7), inclusive? Shall subsections 96(1) to (7) carry? Carried.

Subsection 96(8) is brand new. Is there any discussion of subsection 96(8)? Shall subsection 96(8) carry? Carried.

Section 96, as amended, agreed to.

Sections 97 to 99, inclusive, agreed to.

On section 100:

Mr. Chairman: The words, "the investment committee or the approvals committee" are added to clause 100(2)(b).

Taking it in order, subsection 1 is unchanged. Is there any discussion of subsection 1? Shall subsection 1 carry? Carried.

Is there any discussion of subsection 2? Shall subsection 2 carry? Carried.

Is there any discussion of subsection 3? Shall subsection 3 carry? Carried.

Section 100, as amended, agreed to.

On section 101:

Mr. Chairman: Subsection 101(1) is rewritten. It used to read, "The directors of a provincial corporation shall elect from among themselves a

person, other than a chief executive officer, however designated, of the corporation, to be the chairman of the board."

Is there any discussion of subsection 1? Shall subsection 1 carry? Carried.

Subsection 2 used to read, "The directors may designate the offices of the corporation and may appoint officers to those offices and specify their duties."

Is there any discussion of subsection 2? Shall subsection 2 carry? Carried.

Subsection 3 is unchanged. Is there any discussion of subsection 3? Shall subsection 3 carry? Carried.

Section 101, as amended, agreed to.

On section 101a:

Mr. Chairman: Section 101a is a new section. Is there any discussion of section 101a?

Section 101a agreed to.

Sections 102 to 104, inclusive, agreed to.

1700

On section 105:

Mr. Chairman: There is a government amendment that was handed out to you yesterday with a new subsection 6. First, let us take subsections 1 through 5, which are unchanged. Shall subsections 105(1) through (5), inclusive, carry? Carried.

You will note subsection 6. I will read it again for those of you who may not have it in front of you.

"(6) No action under subsection (1) or (2) shall be commenced in any court more than two years after the facts upon which the action is based first came to the attention of the plaintiff."

The Canadian Bar Association--Ontario and the Trust Companies Association of Canada suggested two subsections. I think the second one is the one that is relevant and it is basically the same as the government's proposal.

Shall subsection 105(6), as amended, carry? Carried.

The other argument had to do with liability under subsection 105(1).

Section 105, as amended, agreed to.

Mr. Haggerty: When you are dealing with a new section, do you not have a mover for that particular section? That is a new section.

Mr. Chairman: You may recall that this was included in Mr. Ferraro's motion yesterday.

Mr. Haggerty: It is all included in it.

Mr. Chairman: It is all there. It will be different when we are dealing with Mr. Ferraro's and Mr. McFadden's new motions regarding section 89, which are not government sponsored.

On section 106:

Mr. Chairman: Subsection 1 is unchanged. Shall subsection 106(1) carry? Carried.

Subclause 106(2)(b)(ii) has been amended. It previously read, "Before or after the action is commenced the corporation is deemed insolvent and is ordered to be wound up under the Winding-Up Act (Canada) or is unable to pay its debts and is ordered to be wound up under the Winding-Up Act (Canada) and the claim for debts is proved."

Shall subsection 106(2), as amended, carry? Carried.

Subsections 106(3) through 106(5) are unchanged. Shall subsections 106(3) to 106(5), inclusive, carry? Carried.

Section 106, as amended, agreed to.

Sections 107 to 111, inclusive, agreed to.

Mr. Chairman: That ends part VI. Part VII is on auditors and financial statements.

I should have brought to your attention that there were comments on section 108 by the Canadian Bar Association--Ontario and the Trust Companies Association of Canada.

On section 112:

Mr. Chairman: Subsections 112(1) through 112(5) are unchanged. Shall subsections 112(1) to 112(5), inclusive, carry? Carried.

Subsection 112(6) used to read: "An auditor has the right to make to the corporation...." In other words, the words "of a provincial corporation" have been added. Shall subsection 112(6), as amended, carry? Carried.

The same change has been made to subsection 7. Is there any discussion? Shall subsection 112(7) carry? Carried.

Subsections 8 through 10, inclusive, are unchanged. Is there any discussion of subsections 8 through 10. Shall subsections 8 through 10 carry? Carried.

Section 112, as amended, agreed to.

Section 113 agreed to.

On section 114:

Mr. Chairman: Subsection 1 is unchanged. Is there any discussion of subsection 114(1), which was all by itself? Shall subsection 114(1) carry? Carried.

Subsection 114(2) is brand new. Is there any discussion of subsection 114(2)? Shall subsection 114(2) carry? Carried.

Section 114, as amended, agreed to.

On section 115:

Mr. Chairman: There is a new amendment that was distributed to you yesterday. There was some discussion of section 115 from the Institute of Chartered Accountants of Ontario. They suggested that the word "or" be substituted for the word "and" in the original version. That has not happened, but I take it the drafting has been clarified.

Ms. Parrish: They asked for it to be clarified and subsequently we had discussions with the lawyer from their institute. The drafting we adopted was a result of those meetings. We felt that just substituting "and" for "or" would probably lead to even more confusion, so we redrafted the whole thing to make it really clear.

Mr. Chairman: Is there any further discussion? Shall subsection 115(1) carry? Carried.

Clause 115(2)(b) has been changed. I do not know whether you want me to read the old one; it is fairly lengthy as well. There is a new definition there.

Is there any discussion of it? Shall subsection 115(2) carry? Carried.

Subsections 115(3) through (5) are unchanged. Is there any discussion? Shall subsections 115(3) through (5) carry? Carried.

Mr. Morin-Strom: I would like to go back to the point of the "and" and the "or". The way it reads now, as long as the person is an accountant, it does not matter whether he is independent or not, but to be an auditor.

Mr. Chairman: I do not think what we have just passed is what you are looking at.

Mr. Morin-Strom: Yes, subsection 115(1).

Mr. Chairman: We handed out a new, clarified motion yesterday.

Mr. Morin-Strom: Okay, go ahead.

Ms. Parrish: It is exactly the same thing you have raised that we are trying to address in that modified amendment.

Section 115, as amended, agreed to.

On section 116:

Mr. Chairman: Yesterday, we were handed a loose-leaf amendment

striking out "possible" in the first and sixth lines and inserting instead the word "practical."

Section 116, as amended, agreed to.

On section 117:

Mr. Chairman: Subsections 117(1) through (7) have not been changed. Any discussion of subsections 117(1) through (7)? Shall subsections 117(1) through (7), inclusive, carry? Carried.

Subsection 117(8) formerly referred to the whole section; now it refers only to subsection 117(6) and subsection 117(7). Is there any discussion of it. Shall subsection 117(8) carry? Carried.

Section 117, as amended, agreed to.

1710

On section 118:

Mr. Chairman: You were handed a loose-leaf to subsection 118(1) yesterday. That was commented upon by the Institute of Chartered Accountants of Ontario. I believe the amendments we were given yesterday were in response to their comments and are not dissimilar from what they suggested. Is there any discussion of subsection 118(1)?

Mr. Haggerty: You removed the word "auditor" and you put in "he or she becomes aware." What are we looking at? Are we looking at the directors in that section?

Mr. Chairman: What do you mean we have removed the word "auditor?"

Mr. Haggerty: It says there, "The auditor shall report to the board of directors of the provincial corporation whenever, in the auditor's opinion," etc.

Mr. Chairman: We changed it to "he or she."

Mr. Haggerty: You have changed it now to "whenever he or she becomes aware that."

Mr. Chairman: Are there any comments from the ministry on that?

Mr. Haggerty: What is the intent of "he or she"? Are we talking about directors?

Ms. Parrish: All we are trying to say is that the auditor shall report whenever the auditor becomes aware of (a), (b) and (c). The reason the words "in the auditor's opinion" were deleted was that they were sort of redundant. What other opinion could he or she possibly have than his own opinion or her own opinion. Second, the accountants indicated they felt the word "opinion" somehow suggested they could have a legal opinion, which they cannot because they are auditors.

Instead of dealing with their opinion about what the legal situation was, what they are reporting are the circumstances. They are saying, "Here are the circumstances that would lead one to believe there might be a

...contravention of the Securities Act," for instance. Because accountants are not lawyers, they cannot say with any certainty, "Yes, there has been a contravention of every aspect of the Securities Act." All they can do is report there are circumstances that would lead them to have these concerns and therefore they are bringing them to the attention of the board of directors. They cannot give an opinion as lawyers; they can only report on the circumstances they discover during their audit. That is why those changes were made.

Mr. Chairman: Similarly, you removed reference to the Criminal Code and it is an umbrella clause with regard to this.

Ms. Parrish: That was the subject of submissions to the committee. There was some discussion among the members, as I recall. The concern was that it was very difficult, given the breadth of the Criminal Code or any other law, and that accountants would be very hard put to know every other law and therefore very hard put to know what to report on. The section has been tightened up to indicate more specifically the areas where auditors should be aware of the legislation, which is this act and its regulations, the Income Tax Act and the Securities Act. It is not entirely fair to expect them to know about every law that might be contravened, because as auditors they are not trained in the law and might in all honestly simply not know.

Mr. Haggerty: I notice you have the Securities Act in it now, defining it there, but the question that was raised before was that you said it would relate only to the larger corporations that come under the Securities Act and it would not pertain to the smaller loan and trust companies.

Ms. Parrish: It is true that violations of the Securities Act are most likely to occur among offering corporations, but where you are auditing an offering corporation, you should be watching for these circumstances. Where you are not auditing an offering corporation, it is very unlikely there would be very much to watch for in the way of Securities Act violations.

Mr. Haggerty: Why did you remove them in this particular section of the bill we are dealing with? It said, "there has been any contravention of the Criminal Code (Canada)." I notice you left that out of there. You have included the Securities Act and the Income Tax Act. Would that not give you a broader field than if there was some misrepresentation given by the directors or chairman of the board of a company or corporation?

Ms. Parrish: You are quite right in saying it would give a wider latitude of reporting. The concern was, would auditors be in a position to know those things? As I said, there was quite an extensive discussion at the committee, and a number of members expressed their concern that this was too wide a net and that it would be more worth while to be more specific about exactly the areas auditors should be watching for.

For instance, the concern was that the Criminal Code includes all kinds of things that may have only a tangential relationship to the solvency of the corporation. It was felt it was better to focus on those provisions that were most closely tied to the loan and trust business, the solvency of the company and the public confidence in the institution. Otherwise, they might be in a position of having to report, for instance, that there was $25 missing from petty cash, which might suggest that there might have been a theft.

I guess it is really a question of drawing the line. In many ways, this section is a novel suggestion in expanding auditors' responsibility. It is

trying to find what is an appropriate amount of information for auditors to have to report on without creating a situation where the best auditor in the world could not possibly find everything. It really is a balancing act as to requiring more and expecting more and requiring something which is unrealistic or could not be achieved.

Mr. Morin-Strom: I wonder whether the terms of this are sufficiently strong, though, so that an auditor would at least be required to report any circumstance where, in his opinion, there is evidence of a theft having taken place. If the auditor's function is to look at what is happening with the dollars in that corporation and if they are being potentially used for some type of illegal or inappropriate purpose, it seems to me there should be some requirement that he report that to the board of directors. I wonder where that is required under this language.

Ms. Parrish: Certainly, they have to report under clause 118(1)(a) anything that may materially and adversely affect the company's financial position. If it was a substantial fraud or theft, they would have to report it under that section. I admit that if it was a minor theft or fraud, then we would have to fall back on what the accounting guidelines would say about what you do and do not report.

Mr. Haggerty: In the past, though, when we had some difficulties with some of the trust companies--I think of Astra Trust in particular--there was a charge made under the Criminal Code of theft under $200 or more than $200. What is it? You are a lawyer.

Mr. Partington: Theft under $200.

Mr. Haggerty: Yes. They have been charged and that is the only way they have really been able to get to them, on that charge under the Criminal Code. Perhaps any charges under the Criminal Code should not be omitted.

Mr. Chairman: Omitted?

Mr. Haggerty: As it is now, you have changed it. In the original bill it was, "there has been a contravention of the Criminal Code (Canada)." We removed that in the amendment. I would like to see that particular section in there. I think it drives home a good point to anybody who is handling--

Mr. Chairman: The issue is whether you want to hold the auditors reponsible for the criminal investigation.

Mr. Haggerty: He is the one who is going to audit the books. If there is any wrongdoing there--

Mr. Morin-Strom: He is not responsible. It is when he becomes aware.

Mr. Haggerty: The amendment there now is that if there is no violation of the Securities Act or the Income Tax Act, then there are no charges pending. In a sense, it says he does not have to report anything else. He can have theft and everything else there, but not report it.

1720

Mr. Wilbee: May I offer a comment on that? These are the requirements under this bill, but I should point out that all auditors have an overriding requirement by the Canadian Institute of Chartered Accountants

handbook, which certainly would require them to be on the alert for fraud in the course of their investigation; not necessarily all provisions of the Criminal Code, but certainly provisions of fraud or any evidence of fraud. To the extent that there is any substantial evidence, they are required, under their own handbook, to report this to the board of directors.

Mr. Haggerty: But their own handbook--to me that is their own governing body. I think you should have more punch in it than that. You can say, "I failed to read the intent of my own code," the code of ethics, you might say. I suggest to you that I see nothing wrong with having that put back in that section.

Mr. Offer: When the chartered accountants were here, they made this particular point very clearly to all of the committee members. It was my impression, and I stand to be corrected, that everyone agreed with their point, that foisting this type of knowledge of the law is almost unreasonable, with respect to the work they are doing, and that they have certain requirements, obligations and responsibilities with respect to knowledge of violations of the law which they must comply with in any case.

That was my recollection of their submission.

Mr. Morin-Strom: I do not recollect the details of it, but even according to the notes, it does not say the auditors have asked that those sections be completely eliminated from the legislation.

An expectation that they understand the whole Criminal Code of Canada may be too much, but it seems to me we could insist that if they see evidence of theft, fraud or misuse of funds, that should be reported to the board of directors of the corporation.

Mr. Chairman: I am hearing a debate on both sides and I think it has been canvassed. We can take a vote now, or we can hold it down, whatever you wish. I suggest holding it down because there are only three members here.

Do you wish to take a vote now on subsection 118(1), as amended? Mr. Partington? Are you suggesting it be held down?

Mr. Partington: We need to take a closer look at this.

Mr. Chairman: Is there a consensus on that? All right. We will hold that down and I would think it would be appropriate to hold the rest of section 118 down so we can deal with the whole section at once.

On section 119:

Mr. Chairman: Clauses 119(1)(a) and (b) have been amended. The previous wording is quite lengthy as well, so I will not read it unless asked. Is there any discussion of clauses 119(1)(a) and (b)? Shall clauses 119(1)(a) and (b) carry? Carried.

Clause 119(1)(c) is unchanged. Is there any discussion? Shall clause 119(1)(c) carry? Carried.

Clause 119(1)(d).

Mr. Offer: We would recommend that the vote be against clause 119(1)(d), on the basis of the representation made, once more, by the

Institute of Chartered Accountants. They indicated that particular subsection is not in accordance with generally accepted accounting principles and would lead to expensive and useless information. Our recommendation would be to vote against clause 119(1)(d).

Mr. Chairman: That concurs with Ms. Evans's memo to us as well. Any further discussion of clause 119(1)(d)? All in favour of clause 119(1)(d)? Opposed? The clause is struck out.

Clause 119(1)(e) is unchanged. Is there any discussion? Shall clause 119(1)(e) carry? Carried.

Subsection 119(2) and (3) are unchanged. Shall subsection 119(2) and subsection 119(3) carry? Carried.

Section 119, as amended, agreed to.

Section 120 agreed to.

Mr. Chairman: Subsections 121(1) and 121(2) are unchanged. Shall subsections 121(1) and 121(2) carry? Carried.

Subsection 121(3) used to read, "The auditor of a provincial corporation shall attend the meetings of the audit committee and the auditor is entitled to be heard at the meetings." That is subsection 121(3). Is there any discussion? You see the amendment in front of you. Shall subsection 121(3), as amended, carry? Carried.

Subsection 121(4) used to read, "The auditor of a corporation, a member of the audit committee or a director may call a meeting of the audit committee at any time." Is there any discussion? Shall subsection 121(4), as amended, carry? Carried.

Subsection 121(5) is unchanged. Is there any discussion? Shall subsection 121(5) carry? Carried.

Subsection 121(6) is brand-new. Is there any discussion? Shall subsection 121(6) carry? Carried.

Section 121, as amended, agreed to.

Section 122 agreed to.

Mr. Chairman: Subsections 123(1) and (2) are unchanged. Is there any discussion? Shall subsection 123(1) and subsection 123(2) carry? Carried. Subsection 123(3) is brand-new. Is there any discussion? Shall subsection 123(3) carry? Carried.

Section 123, as amended, agreed to.

Mr. Chairman: Part VII is complete except for section 118.

Part VIII, Books, Records and Returns: sections 124 to 130, inclusive, are unchanged. Is there any discussion? Shall sections 124 to 130, inclusive, carry?

Sections 124 to 130, inclusive, agreed to.

Mr. Chairman: Section 131 is rewritten. It is shorter now than it used to be. Is there any discussion? Shall subsection 131(1) carry? Carried.

Subsections 131(2) through (8) are unchanged. Shall subsection 131(2) through subsection 131(8) carry? Carried.

Subsection 131(9) is new. Is there any discussion. Shall subsection 131(9) carry? Carried.

Section 131, as amended, agreed to.

Sections 132 to 133, inclusive, agreed to.

1730

Mr. Chairman: Subsection 134(1) and subsection 134(2) are changed. It looks as if the period has been lengthened from 60 days to 90 days. Is there any discussion? Shall subsections 134(1) and (2) carry? Carried.

Subsection 134(3) is unchanged. Is there any discussion? Shall subsection 134(3) carry? Carried.

In subsection 134(4) the word "adopted" was changed to "approved." Is there any discussion? Shall subsection 134(4) carry? Carried.

Section 134, as amended, agreed to.

Sections 135 to 138, inclusive, agreed to.

Mr. Chairman: That concludes Part VIII.

Part IX, Conflict of Interest.

Mr. Chairman: An amendment was proposed in the looseleaf form which was given to you yesterday, to add subsections 139(2) and 139(3). That would mean section 139, as printed in front of you in your book, becomes subsection 139(1).

Dealing first with subclause 139(1)(a)(ii), there is an addition of "reasonably be expected to." Is there any discussion of subsection 139(1)? Shall subsection 139(1) carry? Carried.

Subsections 139(2) and (3) are brand-new, on the procedure for designating an individual as a restricted party of a corporation. Any discussion of subsections 139(2) and (3)? Shall subsection 139(2) and subsection 139(3) carry? Carried.

Section 139, as amended, agreed to.

Mr. Chairman: Subsection 140(1) is unchanged. Is there any discussion? Shall subsection 140(1) carry? Carried.

Perhaps I can read the latter part of subsection 140(2). This is what it used to read: "at any time in the period of 36 months preceding the date of the advance of any funds by the corporation or its subsidiary was owned by a director or the spouse or child of the director or any relative of the director or spouse who has the same home as the director."

Is there any discussion of subsection 140(2), as amended? Shall subsection 140(2) carry? Carried.

The suggestion by the government is that subsection 140(3) not be accepted. What came out of second reading was that subsection 140(2) did not apply where the investment is a purchase of a loan on security of a security as defined in section 1 of the Securities Act. Is there any discussion on leaving out subsection 3?

Subsection 140(4) is unchanged. Is there any discussion? Shall subsection 140(4) carry? Carried.

Section 140, as amended, agreed to.

Mr. Chairman: I should have brought to your attention that the Canadian Life Insurance Association and the Canadian Bar Association had both made comments with regard to section 140. You will notice in Ms. Evans's brief, on page 11, there are comments with regard to section 141 made by the Trust Companies Association of Canada, Huronia Trust, by the Canadian Life Insurance Association underwriters, the Confederation Life Insurance Co. and the Canadian Bar Association.

Yesterday you were given a looseleaf amendment to subclause 141(1)(d)(ii). Starting with clause 141(1)(a), it used to read, "make a loan to any director, officer or employee of the corporation or to the spouse or any child of a director, officer or employee of the corporation on the security of the residence of the person to whom the loan is made if."

Is there any discussion of clause 141(1)(a)? Shall clause 141(1)(a) carry? Carried.

Clause 141(1)(b) used to read, "make a personal loan to any officer or employee of the corporation or to the spouse or any child of an officer or employee of the corporation if the loan qualifies as an investment under clause 160(2)(b)." You see it now as it is written in front of you.

Is there any discussion? Shall clause 141(1)(b), as amended, carry? Carried.

In clause 141(1)(c), the government has added the words, "if it is reasonable that the corporation or the subsidiary obtain or supply the services, and." Is there any discussion? Shall clause 141(1)(c) carry? Carried.

Now you have the looseleaf amendment that you have to work in to clause 141(1)(d), striking out "five" in the second line and inserting in lieu thereof "10." Is there any discussion?

Mr. Haggerty: Why the change from five to 10 years?

Mr. Chairman: There is an explanation.

Mr. Haggerty: Yes, but that does not tell you too much. You are doubling the years on that. What is the reason?

Mr. Wilbee: It was made known to us by the Trust Companies Association of Canada and others that a more normal term of lease in today's environment is, and has been for some time, 10 years rather than five years. It was felt to be fully consistent and a more reasonable number than the five years, which was too tight a test.

Mr. Chairman: Any further discussion?

Mr. Haggerty: When you talk about a subsidiary, they may start a subsidiary and start leasing buildings, and the first thing you know, it does not fly or something within a period of five years. They may want to withdraw from it, and here they are paying another five years' rent.

Ms. Parrish: That is true, but they have to meet all the other tests too.

Mr. Haggerty: I think of the IDEA Corp. in particular.

Ms. Parrish: They have to meet all the other tests, that it is fair rental value, that the terms are the normal terms, that it is a competitive lease and so on. They have to meet those tests first. In addition, they have to meet a test that says the lease cannot be longer than 10 years.

I should note that some of the submissions made to your committee wanted to delete the year test altogether and simply go with fair rental value and fair terms of the lease. However, that would really be an open-ended situation where people could have 99-year leases or whatever with restricted parties. This was felt to be sort of a compromise in terms of time. They still have to meet all these other tests, that it is fair rental value, reasonable and competitive, and the onus is on the company to prove that.

1740

Mr. Chairman: Any further discussion of subsection 141(1)?

Mr. Morin-Strom: An employee is a restricted party. What restrictions does this put on an employee's either getting a loan or a mortgage or having an account in the firm in which he works?

Ms. Parrish: Subsection 2 on page 206 indicates the situation where you can make a loan to an employee. You can make a loan to an employee without board approval as long as the amounts are within amounts as may be prescribed by regulation. That would cover mortgages. On accounts, they would simply be allowed to have any account. There is no prohibition on accounts.

Mr. Morin-Strom: We do not have the regulations. How much is this? I am just concerned that some employees may get trapped here or not be able to deal with the trust company where they are actually working.

Ms. Parrish: Yes.

Mr. Morin-Strom: Do you have an idea of what the limit is likely to be?

Mr. Wilbee: We are looking at that right now. It would obviously have to be something that is reasonable and not excessive, at the same time. The objective you cite, which is not to impede the ability of the employee to have a mortgage from his own employer as long as it is a reasonable residential mortgage rate and not excessive, is what we are trying to aim at. We do not have a specific number cast yet for the regulation.

Mr. Morin-Strom: It is likely to be in the several hundred thousands.

Mr. Wilbee: I would think so, given market conditions of today. The

purpose of putting it in regulation is to allow it to be adjusted to meet market conditions not now contemplated, but which may arise in the future.

Mr. Partington: It would probably be governed by what an ordinary person would get--

Mr. Wilbee: That is correct.

Ms. Parrish: In actual fact, we did change subsection 2, which previously had a limit of $100,000, in order to give this greater flexibility. When we first drafted the act, $100,000 was a big mortgage; now, that cannot buy anything in Toronto, so that was changed.

I should note that you cannot give special mortgage terms to directors or officers of the corporation--if the rate is 10 per cent for me off the street, then they get 10 per cent like anybody else--but you can give employees special deals on mortgage rates. That is a common fringe benefit for employees as part of their employment package, usually because there is no collection problem, i.e., your mortgage payment or your car loan payment is taken right out of your paycheque.

We do not prohibit that. We do prohibit it if you are a director or an officer because of the level of influence you may have on a company, but for employees we say a company may make beneficial mortgage loans to their employees as long as those employees are not officers.

Mr. Partington: Excuse me, but subsection 2 does not talk about rates; it talks about amounts. As clarification of the risk, for example, the amount would not be an amount greater than would be reasonably permitted under a normal lending situation. Is that correct?

Ms. Parrish: That is what the regulations are for, to say so much for mortgage loans and so much for consumer loans, something like that. As I indicated before, we had thought of $100,000 as being the top limit. Now, I think we would be looking at something more, such as a couple of hundred thousand. The purpose of the regulation would be to keep it within a reasonable level so that it is not excessive, but reasonable. If you are teller at a bank, you can actually get a mortgage with your own company as opposed to a trust company.

Mr. Partington: Without belabouring the point, although you might get a reasonable rate, you would not be permitted under this to increase the risk to 100 per cent.

Ms. Parrish: No, it is still 75 per cent loan to value.

Mr. Partington: That is the point I was trying to make.

Ms. Parrish: Yes, that is a good point. All the other rules are the same. It is still 75 per cent loan-to-value.

Mr. Chairman: Is there any further discussion of clause 141(1)(d)? Shall that clause carry? Carried.

Clauses 141(1)(e) to 141(1)(h), inclusive, are unchanged. Is there any discussion? Shall clauses 141(1)(e) through clause 141(1)(h) carry? Carried.

You have been discussing subsection 141(2). Is there any further discussion? Shall subsection 141(2) carry? Carried.

Clause 141(3)(b) used to read, "transactions with a restricted party which involve nominal or immaterial or expenditures by the corporation or the subsidiary." That just had an extra "or" in there that did not make sense.

Shall clause 141(3)(b), as amended, carry? Carried.

Clause 141(3)(c) and clause 141(3)(d) are unchanged. Is there any discussion? Shall clause 141(3)(c) and clause 141(3)(d) carry? Carried.

Subsection 141(4) and subsection 141(5) are new. Is there any discussion of subsection 141(4) and subsection 141(5)? Shall subsection 141(4) and subsection 141(5) carry? Carried.

Section 141, as amended, agreed to.

On section 142:

Mr. Chairman: Section 142 is completely rewritten. Is there any discussion on section 142?

Section 142, as amended, agreed to.

On section 143:

Mr. Chairman: Section 143 is completely rewritten; not completely, but almost. Is there any discussion on section 143, as amended?

Section 143, as amended, agreed to.

On section 144:

Mr. Chairman: With regard to section 144, you will note that Ms. Evans brought to our attention the comments of the Canadian Bar Association and the Trust Companies Association of Canada.

Mr. Offer: I would like to ask that section 144 be stood down.

Agreed to.

Mr. Chairman: Section 144 is stood down. Oh, yes. I am sorry. Mr. Epp brought that to my attention a little earlier.

Sections 145, 146, 147, 148, 149, 150 and 151 are unchanged, although I would bring to your attention that the Canadian Life Insurance Association had comments on section 145. With regard to section 149 the Institute of Chartered Accountants of Ontario had comments, which are in Ms. Evans's memo. They commented on section 150 as well. The trust companies association would have added a further section, section 151a.

Sections 145 to 151, inclusive, agreed to.

Mr. Epp: The hour is late and everybody has been fairly active. I suggest we should cut it off there for today, since we are starting a new part with part X.

Mr. Chairman: That sounds sensible. We are adjourned until tomorrow. I thank everybody for their kind co-operation.

The committee adjourned at 5:50 p.m.

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

LOAN AND TRUST CORPORATIONS ACT

WEDNESDAY, MAY 13, 1987

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

CHAIRMAN: Cooke, D. R. (Kitchener L)
VICE-CHAIRMAN: Ferraro, R. E. (Wellington South L)
Ashe, G. L. (Durham West PC)
Cordiano, J. (Downsview L)
Haggerty, R. (Erie L)
Mackenzie, R. W. (Hamilton East NDP)
McFadden, D. J. (Eglinton PC)
Morin-Strom, K. (Sault Ste. Marie NDP)
Ramsay, D. (Timiskaming L)
Stephenson, B. M. (York Mills PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitution:
Epp, H. A. (Waterloo North L) for Mr. Cordiano

Clerk: Carrozza, F.

Staff:
Revell, D. L., Legislative Counsel

Witnesses:

From the Ministry of Financial Institutions:
Parrish, C., Director, Policy and Planning Branch
Kwinter, Hon. M., Minister of Consumer and Commercial Relations and Minister of Financial Institutions (Wilson Heights L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Wednesday, May 13, 1987

The committee met at 3:55 p.m. in committee room 1.

LOAN AND TRUST CORPORATIONS ACT
(continued)

Consideration of Bill 116, An Act to revise the Loan and Trust Corporations Act.

The Vice-Chairman: Ladies and gentlemen, I see a quorum. I point out to the committee members that we are on page 218 of the revised bill, the bill as amended, at section 151. Initially, I would like the direction of the committee as to its wishes. It is my understanding that we have three clauses stepped down that have to be addressed. The question specifically is, do you want to deal with them now or do you want to deal with them at the end of the first pass-through of the bill?

Mr. Ashe: It might be appropriate to get into them now if we can. There are two other sections I would like to reopen, sections 1 and 108. I appreciate that it requires consent of the committee to do that, but I think it might be more helpful than necessitating sending the bill to committee in the Legislature and holding it up there. Whenever you feel it is appropriate, Mr. Chairman, I will move that section 1, which obviously is the oldest one, be reopened and then the committee can decide accordingly.

The Vice-Chairman: It is the wish of Mr. Ashe that the amendment be dealt with. First, is the committee prepared to reopen section 1? We require unanimous consent of the House.

Mr. Ashe: Of the committee.

The Vice-Chairman: Of the committee of the House. Is unanimous consent granted?

Mr. Haggerty: Is there any particular item he wants to discuss under section 1? If we start at section 1, we may go through the whole thing again and I do not want to go through that.

Mr. Ashe: No, it is nothing like that. It is very specifically in section 1, the bank mortgage subsidiary section. It is really to ask consideration of the inclusion of one word. I will be asking to have one other section reopened. It is way on in section 108, so I can assure you it is not sections 1, 2, 3 etc.; it is section 1 and then section 108. I appreciate that in between that another section was set down from yesterday, section 89, that has not been dealt with in any event.

Mr. Epp: To expedite this, why do we not go through the whole thing and then discuss these things later?

The Vice-Chairman: That would be my preference because I have to speak to one of the motions myself.

Mr. Epp: I do not want to prolong this but I feel that would be a more reasonable thing to do.

The Vice-Chairman: The committee can deal with that. Mr. Ashe has a number of concerns he wants addressed. He has a prior commitment that he unavoidably has to meet in about half an hour. As a member of the committee and as vice-chairman, I want Mr. Ashe's concerns addressed by Mr. Ashe. The point is I do not anticipate we are going to get through the whole act today. I know the minister would like us to, but at the very least I want the assurance of the committee that we will meet again tomorrow to deal with Mr. Ashe's concerns specifically in the event that, for some unforeseen reason, we are able to expedite dispensation of the reading of the act today. Does the committee agree with that?

Agreed to.

The Vice-Chairman: Mr. Ashe, can we deal with this tomorrow?

Mr. Ashe: That is fine.

On section 151a:

The Vice-Chairman: I point out to the committee that we are at page 218, Part X, section 151a, which is a new insertion into the act. The distinction specifically is that in the first draft of the bill there was no section 151a. In the first draft of the bill there was no section 151a. What is being inserted is, "Sections 152 to 170 do not apply to funds, except deposits, held by a registered corporation as a fiduciary." Is there any discussion on that insertion?

1600

Mr. Haggerty: What is the difference between funds and deposits?

The Vice-Chairman: Minister, the question is the distinction between funds and deposits.

Hon. Mr. Kwinter: Funds and deposits.

Ms. Parrish: The difference between funds and deposits?

The Vice-Chairman: Yes.

Ms. Parrish: Funds are the corporation's own money; that is, its capital, retained earnings or whatever. Deposits are the deposits that are segregated and set aside under section 154, I think it is, or section 153.

Hon. Mr. Kwinter: When you are a loan and trust company, you have certain funds that you hold in a fiduciary capacity. This means you are holding them for other people and you have responsibility for them. You have other funds that you hold for your shareholders, but it is different. It is not in a fiduciary capacity. The shareholders are there and they are at risk depending on what you do with that company. That is the difference between funds and deposits.

Mr. Haggerty: You are talking about fiduciary as the trust, property, estate or something such as that.

Hon. Mr. Kwinter: Yes.

Ms. Parrish: The estate, trust and agency accounts.

Mr. Haggerty: The deposits are persons putting money into the trust companies. That would generate funds, would it not?

Hon. Mr. Kwinter: Sure.

Mr. Haggerty: So we would get into the funds area, would we not? When I look at funds there, you say the shareholders.

The Vice-Chairman: What was being said, Mr. Haggerty, was basically a distinction between the corporation's own money--owned by the corporation or assets--and something held in trust by them for a consumer. That is the distinction. There is no distinction for me because I do not have either.

Mr. Haggerty: The question was they are generated funds, are they not? As long as that money is going back--

The Vice-Chairman: Deposits are funds, but not necessarily to the same individual.

Section 151a agreed to.

On section 152:

The Vice-Chairman: Subection 152(1); no change.

There is a change to subsection 2. The old act read, "For the purposes of this act, prudent investment standards are those which a reasonably prudent person would apply to investments made on behalf of another person with whom there exists a fiduciary relationship to make such investments, without undue risk of loss or impairment and with a reasonable expectation of fair return or appreciation."

The new wording is:

"For the purposes of this Act, prudent investment standards are those which, in the overall context of an investment portfolio, a reasonably prudent person would apply...."

Hon. Mr. Kwinter: It is just to provide clarification.

The Vice-Chairman: Are there any questions? All those in favour of the subsection that is amended? Carried.

We have passed subsections 1 and 2. We will go to subsections 152(3) to subsection 152(6). Are there any questions from the committee? If not, all in favour? Passed.

Section 152, as amended, agreed to.

Section 153 agreed to.

On section 154.

The Vice-Chairman: Section 154 has been amended. The old wording of

subsection 1 read, "No registered corporation shall exercise the powers mentioned in section 153 unless it is a member of the Canada Deposit Insurance Corporation or its Canadian currency deposits are insured by some other public agency approved by the superintendent to the maximum amounts permitted by the agency."

The new wording is, "No registered corporation shall exercise the powers mentioned in section 153 unless it is a member of the Canada Deposit Insurance Corporation or its deposits are insured by some other public agency approved by the superintendent to the maximum amounts permitted by the agency."

Hon. Mr. Kwinter: The feeling was that although it was not intended, by referring to it as Canadian deposits, it implied that foreign deposits were not going to be covered. By taking that out, we want to shut out the possibility that because it happens to be in a different currency it would not be insured or covered. That is why we took out the word "Canadian."

The Vice-Chairman: Are there any questions from the committee? All those in favour? Passed.

On subsection 154(2), are there any questions? All those in favour? Passed.

Section 154, as amended, agreed to.

Sections 155 to 158, inclusive, agreed to.

On section 159:

The Vice-Chairman: There is an amendment. Does the committee want me to read this or do it merely want the ministry to explain it.

Mr. Ashe: The latter.

The Vice-Chairman: Is that the desire of the committee, much as you want to hear my golden voice?

Mr. Ashe: We are just trying to save your vocal chords.

Hon. Mr. Kwinter: This is subsection 159(1). It is just to clarify the wording. That is all it is. It used to say, "Except as provided in this act, no registered corporation shall participate in or enter into any investment of its total assets or pledge any of its total assets." The difference really is the word "participate." What does that mean? It was just clarified to say, "shall directly or indirectly invest or pledge." It is spelling out what they mean by "participation." That is all it is. It is just a clarification.

The Vice-Chairman: All in favour of subsection 159(1)? Carried.

Clause 159(2)(a): There are no changes there. All in favour? Carried.

Clause 159(2)(b): There is a change. The prior one says, "shares of any bank." I will read them if they are short. Clause 159(2)(b), as amended, states, "Shares of a bank for which there is no published market as defined in section 88 of the Securities Act."

Hon. Mr. Kwinter: This is for clarification. The prohibition against

certain investments is intended to apply only to the corporation and not the clients of the corporation. There are restrictions against investing trust assets in restricted parties in section 143. The addition to clause 159(2)(b) will permit corporations to take advantage of opportunities to invest in bank shares and build a balanced investment portfolio, while at the same time avoiding arranged transactions that could artificially increase their capital. It is a clarification and that is all it is.

The Vice-Chairman: Any questions from the committee? If not, we are dealing with clause 159(2)(b). All in favour? Carried.

Section 159, as amended, agreed to.

The Vice-Chairman: I might interject for the benefit of Mr. Morin-Strom that the committee decided to wait until the end of our first passage through to deal with the sections that were set down and also with a few other concerns expressed by other members.

On section 160:

The Vice-Chairman: There are no changes from clause 160(1)(a) to subclause 160(1)(b)(iii). Are there any questions? All in favour? Carried.

There is a change in subclause 160(1)(b)(iv) specifically.

1610

Hon. Mr. Kwinter: We are taking out "other than the investing corporation or its affiliate." There is no need for this provision. It could hamper corporations from finding a trust company to act as their trustee. That is just taking out a restriction for which there is no requirement.

The Vice-Chairman: We are dealing with subclause 160(1)(b)(iv) as amended. All in favour? Carried.

Subclause 160(1)(b)(v) is unchanged. All in favour? Carried.

In clause 160(1)(c), there is a change. You took out clauses (d) and (e) as well if you want to address that. It goes from (c) to (f).

Hon. Mr. Kwinter: Concern had been expressed that clause (c) excluded many types of debt instruments that were not bonds or debentures. As it was not the intent to be restrictive, it was agreed to expand clause (c) and for simplicity the three clauses have been combined using the description "securities." Where we had (c) where we talked about "bonds or debentures," "the preferred shares of a company" and "the fully paid common shares," we are now talking about "securities." We have combined the three clauses 160(1)(c) (d) and (e) into (c) and I assume, eventually, the numbers will be changed.

The Vice-Chairman: It is housekeeping more than anything else.

Hon. Mr. Kwinter: "Securities" is a defined term in the act, so it includes all those.

The Vice-Chairman: Are there no questions from the committee? We are dealing with clause 160(1)(c). All in favour? Carried.

Clause 160(1)(f): These arrows are confusing for me. Let us deal with clause (f). It does not look as if it and clause 160(1)(g) have been changed.

Hon. Mr. Kwinter: Clauses (f) and (g) have not been changed.

The Vice-Chairman: The one arrow indicates that clauses 160(1)(d) and (e) have been removed and consolidated as indicated by the minister.

Clauses 160(1)(f) and (g) have not been changed. My wife and I are going to have a wonderful conversation tonight. All in favour? Carried.

Clause 160(1)(h) has been changed.

Hon. Mr. Kwinter: What we have done is to add "under the Credit Unions and Caisse Populaires Act" just to show that only those credit unions and caisse populaires that are registered in Ontario are recognized and included outside of the basket. Without that, it means they could apply to credit unions outside Ontario.

The Vice-Chairman: We are on clause 160(1)(h). All in favour? Carried.

There has been a change in clause 160(2)(a)

Hon. Mr. Kwinter: This amendment will permit loan and trust corporations to make loans to students that are guaranteed under the Ministry of Colleges and Universities Act. Currently, banks, credit unions and caisse populaires are authorized to make these loans. Providing for inclusion of this program by regulation will permit the addition of other government guaranteed lending programs that arise in the future without a change in legislation.

We have consulted with the ministry and it is agreeable to that.

The Vice-Chairman: Are there any queries of the ministry? No queries. We are dealing with clause 160(2)(a), as amended. All in favour? Carried.

Clause 160(2)(b) is not changed. Are there any questions from the committee? All in favour? Carried.

Clause 160(2)(c) has been amended by the insertion of a word. Minister?

Hon. Mr. Kwinter: We just put in the word "sole" before "proprietorships," again for clarification.

The Vice-Chairman: Are there any questions from the committee? None. All in favour of clause 160(2)(c), as amended? Carried.

Clause 160(3)(a) has no amendments. Are there queries from the committee? None. All in favour? Carried.

Clause 160(3)(b) has been amended by adding the word "sole" again.

Mr. Ashe: There is a lot of "sole" in this ministry.

Hon. Mr. Kwinter: It has also been amended by the addition of a clause (c). This creates consistency between unsecured lending and leasing so that those that the categories can lend to will be identical. This relates to

motions which will be made in section 164 to merge the categories of lending and leasing into one basket.

The Vice-Chairman: Clause 160(3)(b) and clauses 160(4)(a), (b), (c) and (d) with two subclauses are all amended. Did you address that in your remarks?

Hon. Mr. Kwinter: I believe I did. The subsection has been rewritten to accommodate the criticism noted opposite and to correct a drafting error. You will remember there was criticism that it was 10 per cent and 10 per cent and that we should combine it into 20 per cent. This has been changed to accommodate that, and it was also decided after consultation with the industry. That is all included in subclause 160(4)(d)(ii).

The Vice-Chairman: Are there any questions from the committee? No questions. We are dealing with clauses 160(3)(b) and (c), clauses 160(4)(a), (b), (c) and (d). All in favour?

Mr. Morin-Strom: Which one are you doing now?

Hon. Mr. Kwinter: We have done everything up to subclauses 160(4)(d)(i) and (ii).

Mr. Morin-Strom: I want to ask about clause 160(4)(a). Here is where you are putting limits on the amount that can be loaned based on the values of various securities. I am particularly concerned about 160(1)(c) which includes all securities, which presumably includes stock, which can be very volatile. You have put a limit based only on the market value. You are allowing loans up to the full market value of the stock based on the market value at the date of the loan. That sounds like a fairly risky proposition unless there are some kinds of limits on that.

I notice in section 161 you have serious limits on real estate. The percentages that can go into that can be secured by real estate as 10 per cent in total and only one per cent in any one parcel of real estate. Where do we have some limits on securing the loans based on common stock, or are there any?

1620

Hon. Mr. Kwinter: Under the basket clause there are limitations, so they can only have a certain proportion in securities. They can only have one per cent in any one company. They are protected in that way, so there is built-in control.

Mr. Morin-Strom: I wonder where that is.

Hon. Mr. Kwinter: Subsection 165(4).

Ms. Parrish: In subsection 165(4), they are limited to corporate securities of no more than 25 per cent of the assets of the corporation, and in subsection 166(1), they can only have one per cent of their assets in any one company. In both cases, they can only have one per cent of their assets. In addition, they can only purchase less than 10 per cent of the shares of any corporation.

Mr. Morin-Strom: Do you think it would be wise to have a percentage of the market value rather than the full market value? You could go in that direction for a little more security or go to an updating of the market value

instead of just fixing it to what the market value was on the date of the loan, and thus reflect changing market values.

Even if you are allowing only one per cent on any one corporation, you are allowing up to 25 per cent in total, and markets tend to swing considerably in unison; in other words, with the TSE 300, Standard and Poor's or whichever. Market prices are up and down, and just spreading it out over one per cent, the corporation may not eliminate the problem of a massive swing in all the market securities.

Hon. Mr. Kwinter: The problem you have is if you deal with it on a daily basis and the value of the security goes down, you are put in the position where you are selling it at a time when it is going down; whereas if you apply the prudent man principle, which governs all this legislation, you have to look it in the context of what is happening so you do not have to worry about daily swings in the marketplace. Then it is the role of the directors and the people who are responsible to decide whether they have made a prudent investment. I think it is impractical to do it on a daily basis. It just would not work. Not only that, but it may be to the detriment of the corporation.

Mr. Morin-Strom: I can accept that the daily basis could be a problem. Why then would you not work with some type of percentage basis where you would only permit loans up to a percentage of the market value, rather than allow 100 per cent of market value on a common stock?

The Vice-Chairman: As they do in mortgages.

Mr. Morin-Strom: Yes. I was under the impression if you go to borrow money from the bank to pay for common stock, it will not let you borrow 100 per cent of the value anyway.

Mr. Ashe: It is hypothetical. It all goes on the basis of the knowledge of your client, his business record or the company's business record and what the overall asset portfolio is. Surely that comes into the prudence of management in investment decisions and in lending decisions, both ways.

Hon. Mr. Kwinter: Also, if you put that kind of restriction on them, it would put them at a competitive disadvantage because we do not require that of other financial institutions.

Mr. Ashe: The better the security, the better the rate you are going to get.

Mr. Morin-Strom: Than what? In respect to the consumers who have put their deposits into this corporation, I feel that they are more at risk with potentially 25 per cent of the assets of that corporation in common shares than they would be with 10 per cent in real estate, let us say, which is the limit you are putting on that aspect. Besides the potential swings in common shares, you are putting at risk a significant portion of the total value of the trust company.

The Vice-Chairman: There are some pretty heavy swings in real estate values too.

Mr. Morin-Strom: I know, but you only (inaudible) at one time.

Mr. Ashe: It is only one per cent of the total asset, so it could be

25 per cent of one company but it would have to be less than one per cent of the assets.

Mr. Morin-Strom: The total stock market can swing by 30 per cent of the year and that is one company. A broad-based stock market average can swing 30 per cent and some years up to 40 per cent in a year. If that happened times 25 per cent of the total asset base of the trust company, you are talking about five to 10 per cent total value of the assets in the trust company potentially being lost.

Hon. Mr. Kwinter: You are going on an assumption that it is going to happen overnight.

Mr. Morin-Strom: I say it would be in one year.

Hon. Mr. Kwinter: No, but what I am saying is that you then go back to the prudent man principle. That is their job, to manage that portfolio. They take a look at what is happening, and that is their role. They have securities that are fully secured and, as that changes, they react to it. They do not do it on a daily basis, but surely over a year they would react if they saw that asset base disappearing. They are going to do something about it. That is their job. They are not there just to receive information; they are there to manage it.

Section 160, as amended, agreed to.

Section 161 agreed to.

On section 162:

The Vice-Chairman: Subsection 162(1) is unamended. Shall it carry? Carried.

Subsection 162(2) is amended.

Hon. Mr. Kwinter: Subsection 162(2) is to make it clear that where a subsidiary owns the office premises used by the parent, such property has been taken into account in determining the permissible investments. That has just been expanded to include that.

The Vice-Chairman: Shall subsection 162(2) carry? Carried.

Section 162, as amended, agreed to.

On section 163:

Hon. Mr. Kwinter: Subsections 163(1) and (2) are new. What they do is permit the sale of foreclosed real estate even if it is over 75 per cent of value. That is because, once you foreclose, you have to realize on the investment. This gives you the flexibility to do that.

Section 163, as amended, agreed to.

On section 164:

The Vice-Chairman: There has been a change in subsection 164(1).

Hon. Mr. Kwinter: The bill has been amended--

The Vice-Chairman: Excuse me, can I interject, Minister? There has been a request by Mr. McFadden, which I have some empathy with. Due to an important commitment on his behalf he has to leave at 5:30, and he requests that the committee agree to adjourn at 5:30. It seems to me we are moving pretty good and we should be able to conclude.

No problem with the ministry? Do the members of the committee agree?

Agreed to.

Hon. Mr. Kwinter: Subsection 164(1) has been amended by striking out "by way of purchase or loan." That is really to remove unnecessary words.

The Vice-Chairman: Any questions from the committee? If, not shall subsection 164(1), as amended, carry? Carried.

Section 164, as amended, agreed to.

On section 165:

The Vice-Chairman: There has been an amendment to subsection 165(1).

Hon. Mr. Kwinter: Clauses 165(1)(c) and (f) have been amended for clarification.

The Vice-Chairman: I hope I get this right. We are dealing with subsections 165(1), (2) and (3). Is that right?

1630

Hon. Mr. Kwinter: Actually what we have there is subsection 165(1), clauses (c) and (f). That takes us down to the bottom of subsection 1.

The Vice-Chairman: You have lost me, Minister.

Hon. Mr. Kwinter: What I have just said, as far as clarification is concerned, deals with subsection 165(1), and it goes right down to the bottom of clause (h).

The Vice-Chairman: For the sake of some consistency, Minister, I would like the committee to address clauses 165(1)(a) and (b), at the top of page 240. Any questions from the committee? All in favour? Carried.

Now I would like to deal with clause 165(1)(c), which is a new clause.

Hon. Mr. Kwinter: Again, it is done for clarification.

The Vice-Chairman: Any questions? If not, all in favour? Carried.

Now we are dealing with clauses 165(1)(d) and (e), which are unamended. Questions of the committee? None. All in favour? Carried.

Now clause 165(1)(f), which is amended.

Hon. Mr. Kwinter: Yes. Instead of it being "bonds or debentures of banks," it says "debt instruments of banks." Again, it is for clarification.

The Vice-Chairman: Questions? If not, all in favour? Carried.

Clauses 165(1)(g) and (h), and we might as well do subsections 165(2) and (3), are unamended. Any questions from the committee? If not, all in favour? Carried.

Subsection 165(4) is changed.

Hon. Mr. Kwinter: It has been changed to follow the change in subsection 160(1), where the word "securities" has been substituted for "bonds and debentures." It is just for consistency.

Mr. Morin-Strom: I would like to move a change to that section. I would like to move that "25 per cent" be changed to "15 per cent."

The Vice-Chairman: Could you put that in writing, Mr. Morin-Strom? Maybe you want to address it first. Never mind putting it in writing. Do you want to talk to it first? The clerk will write it for you.

Mr. Morin-Strom: I feel that we are putting the depositors potentially at risk by allowing 100 per cent loans or loans based on 100 per cent of market value of all securities and that allowing 25 per cent of the total assets of the trust companies potentially in common shares is too high a level. It should be reduced.

Hon. Mr. Kwinter: I just want to clarify that when we talk about securities, we are not just talking about common shares. It could be promissory notes, debt instruments--

Mr. Morin-Strom: But you are not restricting the mix.

Hon. Mr. Kwinter: We are not restricting the mix.

Mr. Morin-Strom: Potentially it could be all common shares.

Hon. Mr. Kwinter: It could, but it could also be--what we are saying is that we think that is an undue restriction because when you get it down to 15 per cent, when you consider these other things that could make up the mix, it could put it at a very low level and that takes away some flexibility.

Mr. Morin-Strom: I think you would give them more flexibility if you were to split off the various types of securities and put individual limits to ensure that that portion of the portfolio does not go 25 per cent solely into common shares. Given the language so far, there is no restriction on putting the full 25 per cent in common shares.

Hon. Mr. Kwinter: Other than that we always harp back to the same prudent man portfolio management. This is what governs the whole idea of segregating these things out, to give guidelines for prudent portfolio management.

Mr. Morin-Strom: Yes, but I do not know if the disasters that have already occurred in Ontario trust companies (inaudible), and also the Alberta banks were being run by the prudent man. We are supposed to be putting some kind of limits here which--

Hon. Mr. Kwinter: That is exactly what we have done. We feel that the 25 per cent is a reasonable figure. You are saying 15 per cent. I do not know what the basis of that is other than 15 per cent sounds better than 25 per cent.

Mr. Morin-Strom: That is right, and I do not know what the basis of your 25 per cent is, but it sounds too high to me.

Hon. Mr. Kwinter: What we are saying is that we monitor these companies now and feel that this is a level that prudently-run companies operate at now. This is something that has been worked out and there has been consultation as to what would be a reasonable figure. Again, as I say, it is a figure that we think is reasonable. You have come up with 15 per cent and I suggest it is just that 15 per cent sounds better to you than 25 per cent. I do not know the rationale other than there is a gut feeling that it sounds better than 25 per cent.

The Vice-Chairman: Any other comments from the committee?

Mr. McFadden: What I am trying to get at is what are you proposing? You are proposing that this be amended presumably after the words "total assets, but in no case..." or something of that nature--

Mr. Morin-Strom: It is only the words "25 per cent" being changed to "15 per cent" in that one section.

Mr. McFadden: But "securities" refers to debt instruments as well. It seems to me we do not have a problem if there is proper security for the debt instruments. I am just looking up the definition of "securities" and my understanding is it includes debt obligation along with share certificates. Are you worried about debt obligations as well, or are you worried about shares?

Mr. Morin-Strom: I am mainly concerned about a portfolio heavily weighted to common shares and the fact that we have not made a distinction within securities between bond, debenture and common share or preferred share issues. I think we would have been wiser to make limits individually so that common shares in fact could not be up to that level solely, which this legislation here is providing.

Hon. Mr. Kwinter: At the present time, there is no restriction. When we met with the industry, to get it down to 25 per cent is going to put some restriction on them. They are going to have to really work to get it down to that level, but to bring it down to 15 per cent I think is an unreasonably low level and it is going to put some very severe restrictions on what they do.

Mr. Morin-Strom: I guess my counter to that would be--why do we not put something like 15 per cent on common shares--25 per cent in total but only up to a maximum of 15 per cent for the common shares or some other combination.

Hon. Mr. Kwinter: The information I have is that in our evaluation of the companies, there is no company now that has more than five per cent in common shares.

Mr. Morin-Strom: So 15 per cent does not sound like it is a problem?

Hon. Mr. Kwinter: No. I say that is not a problem.

The Vice-Chairman: Is this section dealt with or do you want it stood down?

Hon. Mr. Kwinter: We could stand it down so that we could get some wording on it.

The Vice-Chairman: There is a motion on the floor, so I guess it has to be dealt with. The chair will succumb to your wishes--

Mr. Morin-Strom: We can put it off until we deal with--there is a number of other motions to be dealt with later?

The Vice-Chairman: Is that the wish of the committee, that we give the ministry staff a chance to work it out?

Hon. Mr. Kwinter: Sure. It will give us a chance to work it out.

Interjection.

The Vice-Chairman: Yes.

Mr. McFadden: I think it would be particularly valuable to the committee to know the situation today through the industry so we have a better idea. At one point, and maybe I misunderstood, someone said they could have unlimited amounts and some companies had difficulty coming down to that amount, which I was surprised at.

Hon. Mr. Kwinter: No, no. What we are talking about is when we are talking about--you were just talking about securities. He then said, "I want to talk about common shares." We were not talking--

Mr. McFadden: I thought you were talking all along about common shares.

Hon. Mr. Kwinter: No. We were talking security, debt instruments, promissory notes and secured instruments.

Mr. McFadden: That is fine.

Mr. Morin-Strom: Yes. The legislation talks about securities. My problem is that there is no specific limit on those securities all being in common shares. While I do not mind 25 per cent of total securities, if you do not have a control on common shares, then I think there is some potential risk there that could be covered.

1640

Mr. McFadden: What we have agreed to do is stand that down--

The Vice-Chairman: What I suggest to the committee is subsections 165(4) and 164(5) be stood down because legislative counsel have an amendment dealing with both sections that they want to propose. If the committee concurs, we will stand down both.

Mr. McFadden: A further amendment over and above what is set out here.

Mr. Reville: One of the reasons we were opening up this section in the reprint was to eliminate specific references to shares, bonds and debentures, and use the defined term "securites." Mea culpa, mea culpa, mea maxima culpa, but "shares, bonds or debentures" appears in subsection 165(5). I will have a motion tomorrow to make that read "securities"

The Vice-Chairman: If we did not make a mistake we would not appreciate when we did something right.

Is it the desire of the committee that both sections be stood down?

Mr. McFadden: Yes.

On section 166:

The Vice-Chairman: All in favour? That is agreed to.

Mr. Epp is going to present a further amendment to section 166.

Mr. Epp moves that clause 166(1)(a) of the bill be struck out and the following substituted therefor:

"(a) invest, by way of purchases from or loans to any one person or to two or more persons that to the knowledge of the corporation are related, an amount exceeding the greatest of,

(i) $250,000,

(ii) one per cent of the corporation's total assets, or

(iii) such percentage of the corporation's total assets as may be prescribed."

Mr. Epp: The explanation of the motion is that this gives flexibility to alter monetary or percentage amounts by regulation.

Hon. Mr. Kwinter: This is a government motion that was included at the beginning.

Interjection: That has to be read into the record.

Hon. Mr. Kwinter: That is fine.

The Vice-Chairman: This is a further government amendment to the amended bill.

Hon. Mr. Kwinter: That is fine.

Mr. Epp: Does that mean he wants to support it?

Hon. Mr. Kwinter: That is fine. I thought they were automatically read in. I did not realize as we went along we had to read them in.

The Vice-Chairman: Dealing with clause 166(1)(a) as amended, are there any questions from the committee?

All those in favour? Carried.

The Vice-Chairman: Clause 166(1)(b), subsections 166(2), 166(3), 166(4) and 166(5) as amended.

Mr. Epp: Does the amended only apply to clause 166(1)(e)?

The Vice-Chairman: That is the question I was just about to ask. On page 244, does that arrow apply to an amendment in clause 166(5)(e)? There is an arrow at the top of page 244, clause 166(5)(e).

Hon. Mr. Kwinter: There is a change to section 166. There is an arrow at the start and bottom of section 166.

What has happened is there are two changes. The first clarifies that the quantum limit applies to the total of all investments of one person and not the individual investments and the second narrows the definition of related persons for the purpose of this section.

The Vice-Chairman: Are there any questions from the committee?

Hon. Mr. Kwinter: Clause 166(1)(a) sets the quantum limit at the greater of $250,000 or one per cent.

The Vice-Chairman: That is what I read into the record.

Hon. Mr. Kwinter: Yes, that is what you read into it. Subsection 166(2) removes the limitations from investments and bank debt instruments to enable corporations to establish working relationships with the bankers.

The Vice-Chairman: Are there any questions from the committee? Then for the sake of clarity, I am going to deal with section 166, in its entirety, as amended. All in favour? Carried.

Section 166, as amended, agreed to.

On section 167.

The Vice-Chairman: There are no amendments to clause 167(1)(a). Are there any questions? All in favour? Carried.

There has been a change to clause 167(1)(b).

Hon. Mr. Kwinter: The English version of clause 167(1)(b) of the bill is amended by inserting after "maintain," on the third line, "improve, sell." The French version was also amended. It is really for clarification. So it just adds "improve" and "sell" as a clarification item as to the powers.

The Vice-Chairman: Are there any questions? There are no questions. We are dealing with clause 167(1)(b), as amended. All in favour? Carried.

There are no amendments to clause 167(1(c). Are there any questions? All in favour? Carried.

There has been an amendment to clause 167(1)(d) and to clause 167(1)(e).

Hon. Mr. Kwinter: The change really just clarifies that the loan or trust subsidiaries must be incorporated in Canada, so it adds "incorporated in Canada" in both clauses d and e.

The Vice-Chairman: Are there any questions? We are dealing with clause 167(1)(d) and clause 167(1)(e), as amended. All in favour? Carried.

I see my hero has arrived. I will finish off subsections 167(2), (3), (4) and (5), which are unamended.

Mr. McFadden: I have one other question here. With regard to subsection 4, the life insurance industry proposed that we increase the limit in subsidiaries from five to 15 per cent and make an exclusion to the

restriction of those activities that a parent company is already committed to do in-house. Obviously that was not acceptable to the minister or we would have had an arrow in here changing that. According to the life insurance companies, they are concerned about this. Is that five per cent figure based on any conclusion about any particular industry? As I understand it, the life insurance companies may have some problem with the five per cent limit. I am curious to know if the ministry has any view about what specific effect this might have on the life insurance companies and if, from your point of view, anything special can be done for them, or whether anything is needed.

Hon. Mr. Kwinter: There is no limit to what they can do in a loan and trust company. The concern we have is if you increase the capital by more than five per cent, you could have more money in your subsidiary than you have in your parent.

Ms. Parrish: In capital.

Hon. Mr. Kwinter: In capital. Even though we considered their request for 15 per cent, it was felt that five per cent was really a more appropriate figure. You could have that imbalance.

The Vice-Chairman: All right. Are there no other questions? We are dealing with section 167, subsections 2, 3, 4, and 5. All in favour? Carried.

Section 167, as amended, agreed to.

The Vice-Chairman: I thank the committee for their indulgence at this point, and turn the chair over to Mr. Cooke.

1650

On section 168:

Mr. Chairman: Section 168.

Mr. McFadden: With regard to section 168, the brief which we received from the Canadian Bar Association proposed that the authorization be secured from the superintendent rather than from the Lieutenant Governor in Council. Their argument was that this might allow these things to move along faster and more expeditiously. I tend to favour their view.

I fail to see why we want this kind of thing going to cabinet. I do not know that it protects the consumer any better or it would do much. I am not a member of cabinet and never have been, but I assume cabinet has more on its hands than dealing with this. I would assume that this is going to develop into a rubber stamp as it is. I do not see the sense of it going to cabinet. I can see it being in the hands of the superintendent. I agree with the fact that this should be subject to review. I see very little merit in having these kinds of things going to cabinet. It seems to me that it is an added level of complication. The fact is the cabinet is going to have very little impact on or interest in it and I do not know why we are putting this in.

Hon. Mr. Kwinter: We have no problem with that. We were just following the precedent we had before. We will take the guidance of this committee.

Mr. McFadden: Why do I not make a motion and write this down and everything else. I would make a motion that we substitute in the first line--

Mr. Morin-Strom: Can he make a motion after he has spoken to it? Is that permitted?

Mr. McFadden: I am moving an amendment.

Mr. Chairman: There is a motion on the floor to the effect that the amendment be accepted. Perhaps Mr. McFadden can place his motion and we can consider it when it is appropriate, which would be--

Interjection.

Mr. Chairman: I would rule that the motion we are dealing with that deals with the whole act, will permit us to deal with amendments at the time that section comes up. I doubt if Robert's Rules supports me on that. This seems to be the logical way to deal with it, rather than coming back to this in the future. Of course we know we are going to have to deal with this on section 89.

Mr. McFadden: I know we have others. I guess we have a backlog building up on us. I will move now. Whether we deal with it now or later is fine--whatever you choose.

I would move that we substitute in line 1 of section 168 and later--I am not sure which line this is. I have not counted it down--we substitute the words--

Mr. Revell: Excuse me. I would like to suggest that on this particular one, if I could have time to discuss this with Mr. McFadden either at the end of today's business or by telephone tomorrow--because as you can see, there is a mixture of Lieutenant Governor in Council and superintendent powers in section 168. Just simply striking out "Lieutenant Governor in Council" is not going to be helpful here.

Mr. Chairman: That being the case, why do we not come back to section 168?

Mr. McFadden: All right, let us wait. Do you understand what I am getting at?

Mr. Revell: Yes.

Mr. McFadden: We could work out a wording.

Mr. Chairman: You have also heard the view of the minister on this.

Mr. McFadden: So we will just work out a wording.

Hon. Mr. Kwinter: We will take your guidance on this.

Mr. Epp: Which parts do you want to stand down?

Mr. Morin-Strom: I would like to express my strong objection to that.

Mr. Chairman: Of coming back to section 167?

Mr. Morin-Strom: No, the intention that has been expressed by Mr. McFadden on this. I think the government's original wording--the wording as it is today--is the most appropriate one. Our task is to set in law the rules. If

the rules are not going to be followed, it should go to the cabinet for an exemption from following those rules. I do not think that responsibility should be delegated to the superintendent because this is talking about (inaudible) and the requirement for this happening.

Mr. Chairman: That being the case, we will need a debate on this issue. The best time for that debate is when we actually see the wording of Mr. McFadden's amendment. Let us move along to section 169.

Hon. Mr. Kwinter: Mr. Chairman, do you want to deal with the amendments we have in there even though we are not dealing with this new one?

Mr. Chairman: I am in the committee's hands but it would seem to the chair it would be more appropriate to deal with the section in its entirety rather than balkanize it at this stage.

On section 169:

Mr. Chairman: The amendment adds the words "other security for the advance or debt" to the wording that came out of second reading.

Section 169, as amended, agreed to.

Sections 170 and 171 agreed to.

On section 172:

Mr. Chairman: Section 172 has been rewritten. I am not certain what the change is. The 30 days' notice is the same.

Hon. Mr. Kwinter: It deals under the meaning of the Securities Act. The existing section provides for notice to the superintendent within 30 days of receiving notice of the funds' acceptability to the Ontario Securities Commission. Since certain funds are exempt from regulation by the Ontario Securities Commission, for example where participations are over 97,000, there is some ambiguity as to what the existing section would require in those circumstances.

In addition, the reason for giving the superintendent notice is to ensure that participation in a mutual fund will not prejudice the viability of the trust corporation. It is more effectively implemented through prior notice. If the fund is considered to be prejudiced, action can be taken; for example, as a director's order under section 190 prior to approval of the Ontario Securities Commission, and will not be viewed to be in conflict with a decision of the Ontario Securities Commission. The information requirement will enable the superintendent to obtain all documentation if necessary.

Section 172, as amended, agreed to.

Section 173 and 174 agreed to.

Mr. Chairman: That concludes part X. Next is part XI, administration.

Section 175 agreed to.

On section 176:

Mr. Chairman: Subsection 176(7) used to read, "Section 8 of the

Ministry of Consumer And Commercial Relations Act applies to members of an appeal panel." It has been amended to read as you see it.

Hon. Mr. Kwinter: What this really does is provide protection from personal liability to members of an appeal panel.

Section 176, as amended, agreed to.

Sections 177 to 188, inclusive, agreed to.

1700

On section 189:

Mr. Chairman: Section 189 has been changed. It concerns a filing date.

Hon. Mr. Kwinter: Yes.

Mr. Chairman: August 31; it used to read June 30.

Hon. Mr. Kwinter: The intent was to allow a period of six months for the superintendent to review the annual corporate returns and prepare a report. While corporations have fiscal year-ends of December 31, they are not required to report to the superintendent until February 28. June 30 would provide insufficient time for reviewing the returns and preparing the reports, so this date was changed to make it a more reasonable and feasible date.

Mr. Morin-Strom: Why August 31?

Mr. Epp: That is my birthday.

Mr. Morin-Strom: The purpose is to present it to the assembly?

Hon. Mr. Kwinter: No.

Mr. Morin-Strom: Is it presented for the minister?

Hon. Mr. Kwinter: The superintendent has six months to review the reports. Normally, what would happen is that the fiscal period ends December 31. Six months from that would have been the end of June. Because they do not have to report--it is just as when you file your income tax. Even though it is for the tax period, you still have a period of time to file the report. If you do not have to file until February 28, there is insufficient time if you leave it from February 28 until June 30, so the six months goes from the end of February to the end of August. That is all it is. It is a matter of leaving them for six months, but it is a more realistic date because they do not have to file until February 28.

Mr. Morin-Strom: Does the minister do something with it then?

Hon. Mr. Kwinter: The superintendent reviews it to make sure they are complying with everything they are supposed to do.

Mr. Morin-Strom: Does the superintendent have to submit it to the minister?

Hon. Mr. Kwinter: No.

Interjection.

Hon. Mr. Kwinter: It reports before December.

Mr. Morin-Strom: The primary purpose is to lay it before the assembly.

Hon. Mr. Kwinter: They get tabled.

Mr. Morin-Strom: Since the assembly does not usually sit during September, why would you not make it September 30?

Hon. Mr. Kwinter: It is just a matter that six months was August. There is nothing to say that once it is filed--

Mr. Morin-Strom: There is a month and a half anyway. I do not think we ever start up until the middle of October.

Mr. Chairman: Are you intereseted in proposing an amendment?

Mr. Morin-Strom: It does not matter to me.

Section 189 agreed to.

Mr. Chairman: That concludes part XI. Part XII, enforcement and civil remedies.

On section 190:

Mr. Chairman: For subsections 190(1) through (7) inclusive, no amendments are offered. Is there any discussion? Shall subsections 190(1) through (7), inclusive, carry? Carried.

Subsection 190(8): The phrase "after giving the corporation or other person named in the order an opportunity to be heard" has been added. I doubt if they want the two "thes." It used to read, "The director may modify or revoke an order made under this section."

Hon. Mr. Kwinter: It is logical that a corporation or other person should have the right to be heard if the director modifies or revokes an order, the same as when he or she makes an order. This is just to provide them with that opportunity.

Mr. Chairman: Is there any discussion? Shall subsection 190(8), as amended, carry? Carried.

Section 190, as amended, agreed to.

Section 191 agreed to.

On section 192:

Mr. Chairman: An amendment was handed out to you on Monday, "by striking out the word 'designation'" wherever it appears in the whole section.

Mr. Ferraro: Why?

Mr. Chairman: The explanation given is that it is no longer necessary.

Mr. Revell: When dealing with the whole issue of designation yesterday, there was a motion that dealt with the procedure to be followed in the appropriate course of the bill.

Section 192, as amended, agreed to.

Mr. Chairman: No amendments are offered for sections 193 to 202 inclusive.

On section 199:

Mr. McFadden: I have some real concerns about section 199. I know it is not an easy way to deal expeditiously with the kind of problem that would likely be faced by the government under section 199 if it were ever invoked, but it concerns me that the minister or the government of the day may take the kind of action provided for under section 199 without holding a hearing of any type. I know the Canadian Bar Association-Ontario suggested that the director have a hearing, and in fact through that whole section they take out, as I understand from their submission, "Lieutenant Governor in Council," and substitute "director." I am not particularly keen on the idea of the director getting power to do all this either.

I think there is some merit in having some ultimate authority in cabinet. I am assuming as well that no cabinet would likely do this without some thought and without an extreme case being presented. We would hope for that. The only worry I have is that it is an extreme power, an absolute power that can be exercised without a hearing taking place. I would like to ask the thinking behind that and whether we could provide for some form of summary hearing at the very least, so that people would be able to appear before the minister, the superintendent or someone prior to the government being able effectively to put people out of business.

I do not believe the current government, any past government and I hope any future government would do this capriciously or malevolently, but I must say it does worry me in a way that there is no provision for a hearing for people to come and make their case if they have one.

Hon. Mr. Kwinter: There is a provision where they can petition the cabinet for review in 60 days.

Mr. McFadden: How is that review going to be done? Is it reviewed by cabinet or will an actual, formal hearing take place? This is my concern, that the review may be done by the same people who made the basic decision in the first place. That is not much of an appeal in my view. In the past we have always, in the rule of law at least, had the appeal go to somebody other than the people who made the first ruling. That is basic law. We may not be providing for that here. I know this is an extreme circumstance we are trying to provide for, but nevertheless it disturbs me that people are going to be deprived of the right to a hearing.

Hon. Mr. Kwinter: The feeling is that to put it in the hands of the civil service or some administrative official would be just as serious. They may make the decision on the basis of some element without considering the

implications of it. It was felt that because of the seriousness of it, it should be a cabinet decision with the ability for a review within 60 days. We are talking about very serious actions. I think any government, regardless of what government, would not take that action unless it had considered all the factors and decided that was the way to go.

Mr. McFadden: My only question was, could we give thought to some form of summary hearing process before the director or superintendent, so that he would be notified. We could perhaps provide in legislation that the assets could essentially be frozen so that they could not be spirited away and that within seven days or whatever, the director must report, and then the cabinet, based on whatever submissions have been received, would take appropriate action. What I am trying to get at is a potential brake on something taking place so that people would at least have the opportunity, within a very rapid period of time, to give their piece before cabinet took action.

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Hon. Mr. Kwinter: The rationale is that if you were to allow a period for a hearing, it could have two potentially dangerous repercussions: First, if there is dishonesty it could give someone the opportunity to strip the assets, and second, the minute it was announced you would have a run on the bank or the institution. The feeling is that the Lieutenant Governor in Council is not going to wake up one day and say, "I think I am going to take over this company because it sounds like a good idea." Someone is going to have to make the case in making that determination. The determination would be made only in the interest of the depositors, that unless this action was taken right now, there was going to be a problem. A day is too late. If it gets out on the street it will be too late. It has to be done now with the provision for review within 60 days. It is really like sending in a trustee or a receiver. It is a matter of taking control to conserve the assets.

Mr. McFadden: I understand that point. As I said at the start, I am sympathetic to the argument you are making. Perhaps the route to follow to get around that--I understand the point. I am wondering whether, for example, with the 60-day period, a hearing could be provided for there where the cabinet would then receive a report.

Hon. Mr. Kwinter: There is provision for that.

Mr. McFadden: I am looking at subsection 199(5): "Upon the petition of any party or person interested, filed...by order, may confirm, vary or rescind the whole or any part of such order," and so on. Unless I missed something, any hearing would be almost ad hoc because it would have to be odered by cabinet. There would be some ad hoc provision for somebody to come to file a petition.

My point would be to build in something if the ministry feels from past experience that we need to seize things rapidly for the reasons stated. Since there is a 60-day period where people can make their views known and provide any defences they wish to file, I am wondering whether we could not provide, in that 60-day period, a hearing on the request of the party interested. It would take place before the director or superintendent or through an independent panel as provided for earlier on in this part. That panel would report to the minister and to the Lieutenant Governor in Council. At least the perception of fairness would be there in the sense that they would have a chance to come down, make an appearance and put forward their argument. The director, superintendent or panel would make a recommendation. Then the

decision could be made in an unfettered way, based on legislation, either to confirm or not to confirm.

Mr. Haggerty: Do sections 196 and 197 not pretty well lay out the procedures to take before you come to section 199? If I think about what happened to Greymac--

Mr. Chairman: I have a list of people. Do you want to go on it, Mr. Haggerty?

Mr. McFadden: In answer to that question, my only point is that the problem with that is this says "notwithstanding any other provision of this act." You do not have to go through all the earlier things. This can happen immediately. You do not have to go through all the earlier steps.

I understand why that is being done. The earlier steps and all these other things could allow people to spirit away assets if you are dealing with dishonest people. What we have here is not necessarily crooks, but people who feel they have a good case. In fact, there may be a misunderstanding. Word may have got on the street and the minister may have moved in rapidly because they are afraid something is happening. It turns out it was not happening or it was not happening to the degree it was expected. I think people should be able to appear and lay out their case, and not just by way of petition, because that is a pretty structured and rather lifeless way to make the point.

Hon. Mr. Kwinter: May I make a suggestion? This is really an administration of justice issue. If we could stand it down, we will consult with the Attorney General (Mr. Scott), convey your concern and see if we can come up with something that will satisfy. How is that?

Mr. McFadden: That is fine with me.

Mr. Chairman: The ministry has the Canadian Bar Association brief.

Mr. Morin-Strom, did you wish to speak to section 199?

Mr. Morin-Strom: Yes. I disagree with my colleague's point on this and I agree very strongly with the argument that was made by the minister that the power has to be there to act immediately to stop a run on the assets. It seems to me we have seen there is nothing worse that can happen than the loss of confidence in a financial institution. If that is drawn in the public's mind, people are going to withdraw everything they can. That is what happened in those Alberta banks.

If the trust company defaults on a payment or whatever serious event would cause the cabinet to move, undoubtedly on the recommendation of the superintendent, it has to have the power to do that, to give some security to the public and some assurances that the corporation is not going bankrupt and to prevent people from--there may not be any dishonesty involved at all, but if members of the public believe they cannot get their money out of a financial institution, the first thing they are going to do is try to get it out.

I think you have to be able to move quickly and immediately, so any kind of pre-hearing or any kind of delay that makes it a public issue is just going to compound the problem. I think this power is necessary, and it being in the cabinet means that the decision is fully politically accountable. If the political people do something that is inappropriate, there is some control

that something really dumb would not be done by the politicians unless, in fact, it was a serious situation.

Mr. Chairman: I think we hear two different viewpoints on this. The minister suggested he is going to discuss it with the Attorney General and it would seem to be appropriate to stand the section down. We can resume the debate when he reassesses his position. Does that sound fair?

Mr. McFadden: Yes. In fact, I am not disagreeing with Mr. Morin-Strom. I am prepared to go along with what the minister said, but I am just suggesting we look at subsection 5 only, not subsection 1. That is all I am proposing.

Hon. Mr. Kwinter: You are looking at the process for the appeal?

Mr. McFadden: Yes. I raised that in a preliminary way under subsection 1, but I am most concerned about subsection 5. We can talk privately about that.

Mr. Haggerty: Just on that point, the point I was trying to raise before was the matter with Greymac and Seaway Trust, which had its beginning in the city of Port Colborne, and the concerns raised by the investors or depositors at that time and the questions raised for almost a year and a half to the Legislature that something should be done to protect those depositors. Nothing could be done, I understand, under the existing act.

This act is to provide some measures that will have some control over it. Matters may be flagged by the superintendent of insurance if there are difficulties. Sections 195, 196 and 197 pretty well outline it before we get to section 199. I think this is a good measure. Somebody has to be accountable for the actions of any trust company or any lending institution.

I think under section 199 it is the Legislature that is responsible. After all, we make the laws, and here is the accountability for getting some action done. It is a member of the Legislature who usually flags it in the Legislature first before it is even known to the public. Some depositor may come in, some constituent, and say, "There are difficulties within this financial institution." I see nothing wrong with that. I think it is the right direction.

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Sections 192 to 198, inclusive, agreed to.

Mr. Chairman: Section 199 we are waylaying for the moment.

Mr. Ferraro: As the commissioner of the committee, I would like to indicate to the minister that I will be curious about subsection 199(4), the appointment of an appraiser and how that is determined, at a later date. In other words, what I am concerned about is the conflict-of-interest position he may have on some of the larger assets.

Sections 200 to 202, inclusive, agreed to.

On section 203:

Hon. Mr. Kwinter: Subsection 203(3) has been amended by adding the words "to the year in which the order is made." It is to clarify that when an

order is made, it is to be noted in the financial statement for the year in which the order is made. It is just a point of clarification.

Section 203, as amended, agreed to.

Section 204 agreed to.

On section 205:

Mr. Chairman: Section 205 has been amended. It previously read, "Section 8 of the Ministry of Consumer and Commercial Relations Act applies to every person appointed under subsection 204(1) or (7)." You will see how it reads now.

Section 205, as amended, agreed to.

On section 206:

Mr. Chairman: On sections 206 through to section 210, inclusive, no amendments are offered. Any discussion on sections 206 to 210?

Mr. Ferraro: Forgive me, but could you put an order to freeze property in layman's terms for me without having to read the whole of section 206? Is that section saying, in essence, that the superintendent may freeze property? That is what we are dealing with now, are we not? I am sorry. Are we way ahead of that?

Mr. Chairman: No, we are still at sections 206 through 210.

Hon. Mr. Kwinter: Section 206 enables a superintendent to issue a freeze-property order in respect of the assets of a corporation that is the subject of a section 204 investigation order. Although the existing act does not have this facility, this section has been drafted tracing the relevant provisions of the Securities Act. This is really what it does; it just freezes it subject to other provisions.

Mr. Ferraro: Freezes what, Minister?

Hon. Mr. Kwinter: Freezes the assets, the property, of the corporations that are the subject of the investigation.

Mr. Ferraro: They have an appropriate appeal procedure for that?

Hon. Mr. Kwinter: Yes.

Mr. Ferraro: Thank you.

Sections 206 to 210, inclusive, agreed to.

Mr. Chairman: So concludes part XII.

Part XIII deals with Offences and Penalties. Subsection 211(2) was criticized by the Investment Funds Institute of Canada, and you have an amendment, given to you in looseleaf on Monday, that was proposed by the government. The government indicates it meets that criticism.

Mr. Ferraro: Do you have to read that into the record?

Mr. Chairman: No, that is there. That is not the one you were just handed. It was one you were given on Monday and it was incorporated in your motion. Any discussion of section 211, as amended? I should point out as well that in subsection 7 there was the addition of the words "security for the guarantee."

Hon. Mr. Kwinter: Replacing the word "collateral" for greater clarification.

Mr. Chairman: Yes. Any discussion of section 211, as amended in two places?

Section 211, as amended, agreed to.

Sections 212 to 217, inclusive, agreed to.

On section 217a:

Mr. Chairman: Section 217a was not there coming out of second reading.

Hon. Mr. Kwinter: This provides that unclaimed deposits with the provincial corporation will be held by the Treasurer of Ontario. This removes the appearance that corporations are benefiting from funds to which they are not entitled. There is a similar provision in the Bank Act and one is proposed for the federal loan and trust corporations. This will be keeping it uniform throughout the various financial institutions.

Mr. Chairman: Any discussion of section 217a?

Mr. Ferraro: Are we talking about the same time frame for deposit in a savings account as opposed to a term deposit?

Ms. Parrish: Yes.

Mr. Ferraro: The same time frame, 10 years?

Hon. Mr. Kwinter: Yes.

Mr. Ferraro: What do you do with a five-year debenture that comes due and is unclaimed, assuming it is the first five years of that 10 years? What do you do with it?

Hon. Mr. Kwinter: I guess they would realize that and they would hold the proceeds.

Ms. Parrish: I would have to look at that practical circumstance, but it seems to me that is not unclaimed until the end of the five-year term. You would go through the five-year term, then they would have to wait 10 years and then they would have to--

Mr. Ferraro: I understand that, but what would happen with that asset and to the interest for the remaining five-year term?

Ms. Parrish: They would have to hold it. If at the end of 10 years they were unable to establish who was entitled to the deposit, the entire deposit and interest would essentially go the Treasurer.

Mr. Ferraro: And the interest that would accumulate in years six to 10 as well? Is it redeposited, reinvested for the five years, or does it stay in limbo?

Ms. Parrish: No, it would be redeposited.

Mr. Ferraro: Are you sure of that? What if I did not claim the debenture after five years and I came in at nine years and 10 months and said I wanted my debenture, am I out of luck for interest for four years and 10 monhts?

Ms. Parrish: Normally, a guaranteed investment certificate does not have a reinvestment provision in it. What would happen is that--

Mr. Ferraro: Normally, most GICs are picked up.

Ms. Parrish: Yes. Normally, they are picked up, but there is no provision that says, "If I do not show up, you can reinvest it at 10 per cent" or something. I think you are right in the sense that the absence of any specific section that says how much interest you would make, then they would simply make whatever the lowest rate of interest was. They would not get the term deposit rate.

Mr. Ferraro: Let me ask you the question one final time. In that scenario, will the institution be compelled to invest that money until the 10-year period has expired?

Ms. Parrish: They would only get the minimum savings rate, unless we changed this section.

Mr. Ferraro: That is fine, just as long as they are getting some interest.

Ms. Parrish: They would get the minimum savings rate, but they would not get anything else unless we changed the section to say that they have to, but that would be inequitable in the sense that any time during the 10-year period somebody might show up and claim it.

1730

Mr. Ferraro: No, I understand that, but I just wanted to make sure they got some interest before that 10-year period expired.

Ms. Parrish: Yes. The normal practice is that they get the minimum savings rate although, for greater clarity, I suppose we could put in a section that says they should get the minimum savings rate.

Mr. Ferraro: I think that is the very least we should do until the 10 years expire. I do not know if you need an amendment or want to leave it with the government to bring in an amendment.

Ms. Parrish: I guess it is the question of whether you want to rely on industry practice, which is to charge the savings rate.

Mr. Ferraro: No, I do not. I want to protect the investment.

Ms. Parrish: Or whether you want to put in a section.

Mr. Ferraro: Yes.

Ms. Parrish: That is the intent, and I think we could visit that with legislative counsel if the minister is satisfied that we should revisit that with legislative counsel. We should hold that one down to address that issue.

Mr. Chairman: All right. We will hold section 217a down until we can further address it.

I understand the committee agreed to adjourn at 5:30 p.m. We are so close, Mr. McFadden. I am wondering if we can just finish if we work real hard.

Sections 218 and 219 agreed to.

On section 220:

Mr. Chairman: Section 220 is on page 308. Clauses (ua) through to (uf) have been offered. They are additions to the subsection. As well, you were give a looseleaf on Monday with a proposed clause (uaa). Any discussion of section 220, as amended?

Section 220, as amended, agreed to.

On section 220a:

Mr. Chairman: Section 220a is a new section. It was not there before. Any discussion on section 220a?

Section 220a agreed to.

Sections 221 to 223, inclusive, agreed to.

Mr. Chairman: We have finished part XIV. Part XV contains Amendments, Repeals, Commencement, Short title. Section 223a is a new section. It was not there in second reading. Any discussion on section 223a?

Section 223a agreed to.

Section 224 agreed to.

On section 225:

Mr. Chairman: An amendment has been proposed today and was handed out today. It is a government amendment, so it is not technically part of Mr. Ferraro's amendment, but, Mr. Ferraro, would you like to move it as an addendum to your motion?

Mr. Ferraro: I will be happy to do that.

Mr. Chairman: Section 225 then is incorporated in the government amendments. Any discussion on section 225, as amended?

Mr. Haggerty: You are dealing with paragraph 3 on section 30 of the Equality Rights Statute Law Amendment. Is that correct?

Mr. Chairman: That is correct. That is added to the other two bills that have been repealed. Obviously, it had not been noticed earlier.

Section 225, as amended, agreed to.

Sections 226 and 277 agreed to.

Mr. Chairman: Tomorrow, we have to deal with the things we stood down. I understand that, in my absence, Mr. Ashe indicated he would be proposing to reopen section 1. Until tomorrow then after routine proceedings, the meeting is adjourned.

The committee adjourned at 5:35 p.m.

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

LOAN AND TRUST CORPORATIONS ACT

THURSDAY, MAY 14, 1987

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

CHAIRMAN: Cooke, D. R. (Kitchener L)
VICE-CHAIRMAN: Ferraro, R. E. (Wellington South L)
Ashe, G. L. (Durham West PC)
Cordiano, J. (Downsview L)
Haggerty, R. (Erie L)
Mackenzie, R. W. (Hamilton East NDP)
McFadden, D. J. (Eglinton PC)
Morin-Strom, K. (Sault Ste. Marie NDP)
Ramsay, D. (Timiskaming L)
Stephenson, B. M. (York Mills PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitution:
Epp, H. A. (Waterloo North L) for Mr. Cordiano

Clerk: Carrozza, F.

Staff:
Revell, D. L., Legislative Counsel

Witnesses:

From the Ministry of Financial Institutions:
Kwinter, Hon. M., Minister of Consumer and Commercial Relations and Minister of Financial Institutions (Wilson Heights L)
Parrish, C., Director, Policy and Planning Branch

From the Canadian Bankers' Association:
Clarkson, W. D., Senior Vice-President, Mortgages, Toronto-Dominion Bank

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Thursday, May 14, 1987

The committee met at 4:02 p.m. in committee room 1.

LOAN AND TRUST CORPORATIONS ACT
(continued)

Consideration of Bill 116, An Act to revise the Loan and Trust Corporations Act.

Mr. Chairman: We have a quorum. This afternoon we are looking at those items which we held down, plus the item which Mr. Ashe raised yesterday. Basically, we are looking at sections 1, 89, 118, 144, 165, 168, 199 and 217.

I believe there are amendments distributed--

Mr. Haggerty: Are we going to make a new act or a bad act out of this?

Mr. Ashe: We are going to make a better act out of it. It is a good act now; we are going to make it better.

Interjections.

Mr. Chairman: Something is happening with sections 108 and 105.

I thought it would be best to follow these through in the order in which they occur in the act, which means we deal first with section 1.

Section 1 is a little different in that we have already passed it. Mr. Ashe's motion is to reopen section 1; that can be done only with unanimous consent. Speaking about that, there is no logic in listening to argument against opening it because if anyone is against it, he would be voting against it, and that would be it. So I am going to invite argument from Mr. Ashe as to why it should be opened, plus anyone else who wishes to open it. At that point I will ask if anyone is against it. If anyone is against it, that is it. If no one is against it, I will then invite argument from the minister, because this is a government bill, and the ministry obviously had presented the section as it has been passed.

Mr. Morin-Strom: Are we arguing first about whether the section should be reopened?

Mr. Chairman: Right.

Mr. Morin-Strom: Solely that, and not the substance of his motion?

Mr. Chairman: You are right, although I suppose there might be some leeway as to the substance. What is your position on that?

Mr. Morin-Strom: Why would we reopen it? I do not have any problem with that.

Mr. Chairman: I think we will need an explanation from Mr. Ashe as to why it was not raised when we were dealing with section 1.

Mr. Ashe: Fine. The problem lies in the definition of a bank subsidiary. At the moment, it is very specific. I am not quite sure that was the intent, at least initially. "'Bank mortgage subsidiary' means a wholly owned subsidiary of a bank that receives deposits that are guaranteed by the bank and whose activities are restricted to the receiving of deposits and mortgage lending."

That presupposed that a bank mortgage subsidiary did 100 per cent of its activities in mortgages. In fact, as we all know, in federal legislation under the Bank Act, these subsidiaries are allowed a small latitude to deal in other types of lendings, and some of them are dealing in small business loans, for example, to a small percentage of their portfolio.

That is what is behind it, not to put these companies temporarily in the position of having to re-create the wheel for a relatively short period of time.

Therein lies the second point. It has been indicated by the federal Minister of State for Finance that the restrictions regarding bank mortgage operations will be removed and ultimately these bank mortgage subsidiaries will not be necessary at all, because the banks will be able to carry on those same functions entirely on their own.

We are probably talking about a period of the next few years when most likely they will all be self-liquidating, if you will. They have to change their existing operations for this small percentage of their business.

I understand that in the view of legislative counsel, these words would properly take care of the problem. I am not suggesting the committee will accept them. I understand they possibly have reasonable acceptance by the minister, but I am sure he will speak on that himself.

It is putting in, "'Bank mortgage subsidiary' means a wholly owned subsidiary of a bank that receives deposits that are guaranteed by the bank and whose principal activities are the receiving of deposits and mortgage lending."

Keeping in mind that there are already the existing restrictions under the Bank Act, including the definition of mortgage loan corporation, it could also be done by making specific reference that it was felt this was simpler and clearer than bringing out a long section that is included in the Bank Act. But "mortgage loan corporation" and the restrictions that already exist are there.

That is the basis of it, and frankly, it was just not recognized the first time that this would make part of the activities of some of the existing bank subsidiaries illegal, if you will, under the new act. I do not think that was the intent.

Mr. Chairman: Is there any other argument in favour of reopening section 1?

Is there anyone opposed to reopening section 1?

Not seeing any hands, does the minister have any argument in opposition to reopening section 1?

Hon. Mr. Kwinter: No, we have no objection to reopening it.

Mr. Chairman: We are prepared for a vote then on reopening section 1. All those in favour? Opposed? It is agreed.

1610

On section 1:

Mr. Chairman: Mr. Ashe moves that the definition of "bank mortgage subsidiary" in section 1 of the bill, as set out in the government motion previously adopted by the committee, be struck out and the following substituted therefor:

"'bank mortgage subsidiary' means a wholly owned subsidiary of a bank that receives deposits that are guaranteed by the bank and whose principal activities are the receiving of deposits and mortgage lending."

The motion is on the floor. Any discussion on it?

Mr. Epp: I would like to hear something from the ministry officials on this.

Hon. Mr. Kwinter: When we started out with this whole issue, the idea was that we would restrict this act to limit what the banks could do when it came to loan and trust business. They made the argument, and they made it quite eloquently, that if we did that, it would virtually put them out of the mortgage business. It was in response to that that we made the specific exemption to let them get into the mortgage business.

When they made their representation to us, all they wanted was to do that. Subsequent to that, they said, "We now discover really that, under that provision, under the Canadian Bank Act, we have some leeway to do some other loan and trust business."

The problem I have with it is that if we do not put some specific sort of cap on it, we will be in a position where their argument is, "The Canadian Bank Act allows us to do this, and you should make your act conform to the Canadian Bank Act." We have no control over the Canadian Bank Act, and there are all sorts of things that could happen. It is felt this thing may just disappear and go away once the the amendments to the act come in.

We would like to see a very specific number in there. If we are talking about a principal amount of business done in mortgages, I would be much happier if we had a figure in there saying 85 per cent, so that it is not based on something we have no control over if the Bank Act is amended. I think that would satisfy their needs in effect, because it gives them the opportunity of having that leeway to deal with loan and trust activities outside of the mortgage situation.

I suggest an alternative or amended motion that means a wholly owned subsidiary of a bank that receives deposits that are guaranteed by the bank and whose investments and mortgages equal at least 85 per cent of its deposits. That would give them the leeway they seek, but it quantifies it so it is not ambiguous and it is not subject to arbitrary interpretation.

Mr. Epp: I guess if this were not done, it would give the banks an unfettered latitude we would not want to give them because they now have an

extraordinary amount of clout out there, and it would give them even more if we did not put this cap on it, so to speak, of 85 per cent or whatever.

Mr. Ashe: I have no problem, and frankly I do not think the banking community does either, with the principle of what the minister is saying. I think we are all saying that probably the subsidiaries are going to put themselves out of business eventually anyway because they will not be necessary, but the restriction under the present Bank Act--and I appreciate what you are saying, that in theory that could be changed differently from what we perceive--already says 80 per cent. It is my understanding, and I stand to be corrected on this, that none of the bank subsidiaries is anywhere near that limit anyway. Something in the area of 10 per cent is the maximum. Am I somewhere in the ball park? Does anybody know out there?

Interjections.

Mr. Chairman: Perhaps you could receive that information privately and let us know, Mr. Ashe.

Mr. Haggerty: I was just going to say the motion moved by Mr. Ashe changes the whole section considerably, because the minister has moved a motion in Bill 116 that really restricts the bank in funding mortgages and says it is because of certain restrictions in the Bank Act. What are those restrictions in the Bank Act? What numbers are we looking at?

Mr. Chairman: Right now it is Mr. Ashe's motion that is on the floor.

Mr. Haggerty: Yes, that is right.

Mr. Ashe: Frankly, I do not think we are differing on this. I think the change in the restriction, if you will, suggested by the minister is appropriate. I am quite willing to change my motion accordingly or to have a government motion; whichever is fine.

Mr. Chairman: Will you withdraw your motion and then move a new motion? Maybe we will make you the parliamentary assistant.

Mr. Ashe: That would be a good idea.

With the agreement of the committee, I will withdraw my previous motion and submit a new one.

Mr. Chairman: Mr. Ashe moves that the definition of "bank mortgage subsidiary" in section 1 of the bill, as set out in the government motion previously adopted by the committee, be struck out and the following substituted therefor:

"'Bank mortgage subsidiary' means a wholly owned subsidiary of a bank that receives deposits that are guaranteed by the bank and whose investments in mortgages equal at least 85 per cent of its deposits."

Mr. Ashe: Although some may feel that is restrictive, I think it is reasonable and responsible.

Mr. Chairman: Is there any discussion of this new amendment?

Mr. McFadden: I would just like to ask a question. What is the 85 per cent figure based on? Is there some magic in the figure? Does this relate in any way to something?

Hon. Mr. Kwinter: The main thing it relates to is the idea that it would be the principal business. There is nothing magical about the number other than saying, "What is the principal amount that should be in mortgages?" Some are saying, "The bulk of our business is in mortgages anyway, but we want to have that leeway." It is the principal amount; that is the amendment that was recommended and which talked about main business, primary business or principal activity, if it is a mortgage company, which it is supposed to be. Once you get below that--and I admit it is an arbitrary figure--you are then going to say that really is not your principal business because you have a fairly large chunk doing something else. It is felt that is something they should be able to live with because it really addresses their concerns. What we did was we made one concession, because at one time we were going to exclude that completely. Now we are making another one, and we think it is fair and reasonable.

Mr. McFadden: There is one other thing: Since 85 per cent would have to be in mortgages, I take it that a percentage of the remaining 15 per cent would have to be in cash. I do not know what percentage that might be. Would it be five or 10 per cent in a fairly liquid situation?

Hon. Mr. Kwinter: I do not think there is any prohibition on what that other 15 per cent can be, other than it has to meet the criteria, but not as to categorization.

Mr. McFadden: Do we have any information, though, based on what now is the situation, as to the habit of these companies with their total portfolio? Do we have that information at all?

Hon. Mr. Kwinter: We have been given to understand that they are running about 90 per cent of their business in mortgages.

Mr. Ashe: That was my understanding as well.

Mr. McFadden: Do we know what the rest of it is being used for?

Mr. Ashe: Small business loans principally, I am told.

Ms. Parrish: Certain kinds of debts and securities, I understand.

Mr. McFadden: How much of debt should be strictly liquid assets?

Ms. Parrish: I would argue that some of the cash would probably be incidental to mortgage lending. For instance, if they liquidate a mortgage today and get in $57,000 and they have to wait until tomorrow to get the other $43,000 if it is a $100,000 mortgage, that would be incidental to mortgage lending; that would be part of the 85 per cent.

Hon. Mr. Kwinter: The other thing it is important to know is that if our examination shows this is not the case and if we found the imbalance were going the other way, there is nothing to prevent them from getting registered under this bill to do whatever they are doing. All this is is an exemption, and we are saying: "You are exempt as long as you do not reach anything above this level. If you go above that level, you are no longer exempt; you have got to come in and be regulated as a loan and trust company." It is not as if it is really restrictive. It is just a matter of saying: "We want to be exempt. We have these other things that we do. We want to make sure that is not cut." But if it gets any bigger than that, then they really in a position where they should be regulated, and they can be. It is not going to restrict them; it

just means they have to get registered under the act.

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Mr. McFadden: In summary, to your knowledge and based on the figures you have, all bank mortgage subsidiaries currently operating would be able to meet the standards? You are not talking about pulling anything as of now?

Hon. Mr. Kwinter: We have representatives of the CBA, the Canadian Bankers' Association, here now and they might want to respond.

Mr. Chairman: Perhaps they could nod.

Mr. McFadden: Perhaps we could have an indication, because I just do not know what we are doing here.

Mr. Chairman: I think we have to have unanimous consent of the committee.

Agreed to.

Mr. Chairman: Would the representative come forward then. Have a seat.

CANADIAN BANKERS' ASSOCIATION

Mr. Clarkson: I am Bill Clarkson, senior vice-president of the Toronto-Dominion Bank and president of our mortgage corporation.

Under the regulation of the Loan Companies Act, we must maintain 15 per cent of our deposit liabilities maturing within 100 days in cash or government of Canada securities. At the present time, the TD Mortgage Corp.--and I will give you the numbers on that. We are about an $11-billion coporation, and as a result we have to keep roughly $1 billion in cash and government debt securities, so that then reduces the amount we can lend for other things by that percentage.

At the present time, out of that $11 billion of our company, we do have $1 billion roughly in government debt securities. In addition, we have approximately $1 billion in other securities, basically promissory notes which are classified as securities and guaranteed by the bank. As well as the deposits, the securities are guaranteed. Out of the $11 billion or $12 billion we have right now, we do have a couple of billion dollars that would not--

Mr. Ashe: So your concern, in the ministry's view, is whether that $1 billion that you are obliged to keep in other securities--government securities and so on--is part of the 15 per cent, or does it see that as excluded from the 15 per cent? That is a legitimate question.

Hon. Mr. Kwinter: You are free to invest your capital. We are talking about deposits.

Mr. Clarkson: That is true.

Hon. Mr. Kwinter: The liquidity requirements are not considered deposits.

Mr. Clarkson: They are in excess of our capital because of the leverage we are provided for that.

Hon. Mr. Kwinter: They are not considered deposits, though. They are reserves or whatever, but not deposits, and all we are talking about is deposits.

Mr. Clarkson: That makes it more restrictive, if it is 85 per cent of our deposits. Would it not?

Mr. Ashe: It makes it more restrictive.

Mr. Clarkson: It could.

Mr. Ashe: How do you figure that? You can do anything you want. Obviously, I should not put it that way. Your capital is not part of that at all, so you can use it in whatever way you are allowed under the Bank Act.

Hon. Mr. Kwinter: Also, the definition is that your liquidity requirements are not considered part of your activities. We are talking about deposits and activities or what you do; and when you have your liquidity requirements, your capital requirements, they are not part of it.

Mr. Clarkson: I would really have to look at the numbers in order to see where it would put us at the present time and likewise where it would put the other things.

Mr. McFadden: The TD Mortgage Corp. has $11 billion in assets. That would be combined deposits and capital, is that correct?

Mr. Clarkson: Actually, when I speak of assets, it is mortage loans, deposits, securities and other assets.

Mr. McFadden: Of that $11 billion, roughly how much of that would be deposits?

Mr. Clarkson: About $10.5 billion.

Mr. McFadden: Did you hear that?

Mr. Clarkson: About $10.5 billion are deposits.

Mr. Chairman: Out of $11 billion, $10.5 billion are deposits.

Mr. Clarkson: Yes, roughly in that neighbourhood.

Mr. McFadden: Out of $11 billion.

Mr. Chairman: Does anyone else have questions of Mr. Clarkson or want to add a further comment?

Mr. Ferraro: I have a question of the minister, but Mr. Clarkson may want to comment on it. I do not know.

Mr. Chairman: Perhaps you could sit there, Mr. Clarkson, for a few minutes. It may be relevant.

Mr. Morin-Strom: Has Mr. Ashe's motion now been changed to this government motion on the same subject, which includes the 85 per cent?

Mr. Chairman: He withdrew his motion and it now reads as the government one.

Mr. Morin-Strom: So I should be talking about the government one in relationship to the one we passed previously.

Mr. Ferraro: Mr. Ashe has joined the government.

Mr. Morin-Strom: The one concern I have here is that there may be a slight change in meaning from the original intention, which may or may not be significant depending on what the word "deposit" means. The previous motion says "restricted to receiving deposits and mortgage lending." We have been talking about the mortgage lending, putting a figure at least 85 per cent, but we have not talked about the restriction to receiving deposits. In fact, the new motion now does not put any restriction on deposits. I do not know if funds come into banks from other means than deposits or whether everything that comes into a bank is classified as a deposit, but if deposits are a much smaller fraction of their business rather than the principal activity of the funds coming in, there is no restriction here in the new government motion.

As I can see, there could be a lot of business coming in, in areas other than deposits and then the mortgage portion only has to be 85 per cent of that deposit and they could be in a lot of other activities under this new motion. Why is there not some kind of specification that, in fact, deposits are the major portion of the business coming in?

Mr. Chairman: Have you looked at the definition of "deposit" under section 1?

Mr. Morin-Strom: That is a definition for trust companies and loan companies. I am not sure it is for banks. Maybe it is.

Hon. Mr. Kwinter: Do you want to respond to that?

Ms. Parrish: I do not think there is a real policy difference, although I agree the wording is different. Financial institutions will have deposits and then they will have capital, and capital will include shareholders' capital, retained earnings and all those things. They may even have, in fact, loans they have received and reinvested.

What we are really concerned about is deposit taking, because that is what we try to regulate under the Loan and Trust Corporations Act. We are not trying to regulate what they do with their capital because that is regulated elsewhere. What we are really concerned about, as the minister said earlier, is ensuring that the exemption they get from having to register under this act, which is intended to protect the public interest, should be restricted to a situation where a very high proportion of their deposits are invested in mortgage lending.

If they wish to invest their capital in securities or bonds or whatever, and they are permitted to do so under the Bank Act, that is not the public policy concern we are trying to capture. The public policy concern we are trying to capture is, "What are they doing with their deposits?" because that is, after all, who we are trying to protect under this act. We are not trying to protect the shareholders who happen to be banks.

That is why the focus is here on deposits rather than on general assets.

Mr. Morin-Strom: Is there any source of cash other than capital or deposits?

Ms. Parrish: Yes. There are retained earnings and--

Mr. Morin-Strom: No. I am talking about the general public putting money in, in the sense of trust funds, pension plans, annuities or guaranteed investment certificates. Those are all classified as deposits?

Hon. Mr. Kwinter: They are all deposits.

Ms. Parrish: Loan corporations do not, at this time, have any trustee powers, so they do not have the powers of trust companies to have estate accounts or whatever.

Mr. Ferraro: I notice that the motion qualifies the definition to the extent that it says "a wholly owned subsidiary." First, my understanding of "wholly owned" would be that it is owned 100 per cent by the bank.

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Hon. Mr. Kwinter: Yes.

Mr. Ferraro: Can the minister explain to me why he qualified that? I guess I am drawing an analogy to a situation where the bank would have a mortgage subsidiary and for the sake of this example, David McFadden Investments could own two per cent. Is it not wholly owned, and in that scenario, what are the ramifications of the proposals?

Hon. Mr. Kwinter: The whole thrust of the banks' argument and the argument that we bought is that these mortgage subsidiaries are not separate. They are not outside the bank. They are set up as a wholly owned entity within the bank, and the same people are involved with them.

Mr. Ferraro: I understand that. Can they get out of it by selling one per cent to somebody?

Hon. Mr. Kwinter: It would then have to be registered. They cannot sell it without registering it.

Mr. Ferraro: Okay, so they register it. So then the exemption does not apply?

Hon. Mr. Kwinter: Then the exemption does not apply.

Mr. Ferraro: So they can do whatever the hell they want anyway then.

Hon. Mr. Kwinter: No. Then they are no longer a wholly owned subsidiary.

Mr. Ferraro: All right; I am looking at it from the other side.

Hon. Mr. Kwinter: I am looking at it from this side. They are no longer a wholly owned subsiary if they do that.

Mr. Ferraro: So they are precluded. All right.

Mr. Partington: Did I understand correctly that you indicated that investments for purposes of meeting the reserve requirements would be deemed to mean investments in mortgages; that is, to carry out a mortgage transaction, it is essential to set aside some reserves? Is that right?

Ms. Parrish: If it was incidental to mortgage lending, I think it would be part of mortgage lending. If you have to put your money in a bank overnight while you aggregate enough money to put out a mortgage, I think that is incidental to mortgage lending. However, if you put it into long-term government of Canada securities, it would not be mortgage lending. It might be safe, but it would not be mortgages.

Mr. Partington: Is there a requirement that a certain percentage of a deposit or percentage of a mortgage amount be set aside for reserve?

Ms. Parrish: Not to my knowledge; if they are reserving under the Bank Act, but not under our act.

Mr. Partington: Would you clarify that?

Mr. Clarkson: Under the Loan and Trust Corporations Act, we must set aside 15 per cent of our deposit liabilities within 100 days in the form of cash or government of Canada securities, and there are specific maturities that we can use.

Hon. Mr. Kwinter: That is a liquidity requirement, not a reserving requirement.

Mr. Clarkson: That is what they call a liquidity requirement.

Mr. Ashe: These are short-term. You are just buying short-term government of Canada notes.

Mr. Clarkson: The requirement is that you can have a certain percentage up to 10-year bonds and a certain percentage up to five-year bonds. Naturally, as a prudent manager, you do mix the maturities of your liquidity in order to take advantage of the yield curve, if necessary, and get the best return on that liquidity for your company. So it is a mixture of short-term and medium-term; not long-term, really, but medium-term.

Mr. Partington: My concern is that reserve makes it very close to the line as to whether you are over 85 per cent or under 85 per cent.

Mr. Ashe: I think that was answered before, that it does not count.

Mr. Partington: She did not say that at the very last.

Mr. Ashe: I think she did.

Mr. McFadden: I am sorry to belabour this, but it is just that it seems to me that this is a technical problem here. I am just trying to understand it. I am taking the figure you provided, which was that $10.5 billion was in deposits. If we take 85 per cent of that--my arithmetic may be wrong; I am not a banker--I think it comes to $8,925,000,000. You have that $500 million figure in there of capital that clearly you can do whatever you want with, but 85 per cent of that, in your case, would be $8,925,000,000. Would that create a problem in terms of your mortgage activities if you had that amount available, together with the $500 million, as it now stands?

Hon. Mr. Kwinter: That would leave you $2.75 billion to play around with.

Mr. Ashe: To play around with under the Bank Act.

Mr. Clarkson: We would be very close to the line right now.

Mr. Ashe: Again, we are back to the same old thing here. We will get this cleared once and for all. You said before, if I understood you, that besides your requirements under the Bank Act for your liquidity, you had about $1 billion in other forms of investment. In my view, $1 billion out of $10 billion, let alone $10.5 billion, is 10 per cent. So how do you figure the 10 per cent is nearly 15 per cent? You cannot have both here. Fifteen per cent would still leave you with something in the order of $600 million of leeway.

Mr. Clarkson: We are close to $9 billion in mortgages.

Mr. Ashe: They still have about $600 million that they could be moving out of mortgages into something else without contravening this section.

Mr. Chairman: I think we might be ready for a vote now.

Mr. Ashe: I think so.

Mr. Chairman: On section 1, as amended by Mr. Ashe. Does everyone know what you are voting on? You are ready?

All those in favour of the amendment?

Opposed?

Motion agreed to.

Section 1, as amended, agreed to.

On section 89:

Mr. Chairman: On section 89, you have three amendments. On subsection 89(2), there is a proposal from Mr. McFadden; on clause 89(3)(a), there is a proposal from Mr. Ferraro; and on clause 89(3)(d), there is a proposal from the government. Let us deal with them in order.

Mr. Morin-Strom: Do we have copies of them?

Mr. Chairman: Apparently there is a copy in front of you.

Mr. McFadden: I believe they were distributed last week.

Mr. Chairman: They were handed out Tuesday.

Mr. McFadden moves that subsection 89(2) of the bill be amended by striking out "one third" in the first line and inserting in lieu thereof "half."

Mr. McFadden: I base this amendment on two things. First, last fall, during the course of our hearings on corporate concentration within the financial services sector, we heard a lot of testimony about conflicts of interest. We heard testimony of self-dealing, restriction on ownership of companies, the responsibility of directors, officers and auditors and so on.

One of the points that came through loud and clear was the important value to a trust company and, I suggest, to the public generally of independent, knowledgeable, outside directors who can not only provide advice

to the company but also, where necessary, raise objections when a company becomes involved in what appear to be questionable practices.

It would seem to me the standard of one third does not achieve that kind of purpose. Effectively, one third does not represent much on a board. If you worked out the arithmetic, it could be as few as one or two people out of, let us say, five or six. It is my view that the standard of one half will tend--and if the directors respect the kind of responsibilities that are contained in the act, will strengthen the trust and loan industry, will safeguard the public interest and will give to the companies the advantage of outside advice and assistance.

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The second reason for my moving this particular amendment is that when the various industry groups were here several weeks ago, particularly dealing with this act, after submissions, they all indicated they felt the standard of one half or more was satisfactory and, in fact, desirable.

There may be some companies that might not be happy with having one half of their directors coming from a pool outside their company, but I would suggest that this kind of change is in the public interest and is consistent with not only the submissions we have received in recent months but also the kinds of issues that have been raised in Ontario in recent years after the collapse of various trust companies from Greymac to Crown Trust.

I would suggest that a standard of one half of the directors of the company being outside directors is a valuable thing and is in the public interest.

Mr. Ashe: I will not repeat all that Mr. McFadden has said, because I agree with all of that. If anything, I think I was kind of weighing whether it should even be as high as two thirds. At least, the one half seemed to be the compromise and, as Mr. McFadden has pointed out, I think we had every indication from those who appeared before this committee in the past that this would not be onerous. In fact, most of the companies--let us say the larger and more established companies, in any event--operated on that basis now. The only ones that may have some problems would be some of the smaller companies. Frankly, I would suggest that this act is probably there to protect the constituency we represent in those areas more than any other.

Although they may not be too happy with that, I think that is all the more reason why that responsibility should be put on. Besides, for those who do not have the half, I am ready, willing and able to fill any of those directorships.

Mr. Chairman: Are you looking for retirement from your present position?

Mr. Ferraro: I will be very brief. I agree with the arguments made by my colleagues, but I am curious--and I know that most corporations have more than five directors--when you have that number, how you divide five by one half or one third.

Mr. Ashe: "At least." With five, you would need three.

Mr. Ferraro: All right. Is that what it said, "at least"?

Mr. Ashe: It is "at least one half." It was "at least one third." Now it says "at least one half."

Mr. McFadden: It says "at least."

Mr. Ferraro: My apologies.

Mr. Chairman: Unless some of the directors are half-wits.

Mr. Ferraro: As we have said.

Mr. Chairman: Does anyone else wish to discuss Mr. McFadden's amendment?

Mr. Ashe: May I put my résumé on file?

Hon. Mr. Kwinter: I just wanted to be on the record that we have no problem with that.

Mr. Chairman: Is the committee ready for the vote on Mr. McFadden's amendment? All those in favour? Opposed?

Motion agreed to.

Mr. Chairman: Shall subsection 89(2), as amended, carry? Carried.

Mr. Ferraro's amendment has to do with clause 89(3)(a). Would you like to move that, Mr. Ferraro?

Mr. Ferraro: I do not have it in front of me, but I would be happy to do so.

Mr. Chairman: Mr. Ferraro moves that clause 89(3)(a) of the bill be amended by striking out "10" in the first line and inserting in lieu thereof "5."

Just to make sure the committee understands, this is Mr. Ferraro's personal amendment, as opposed to being the government's. Mr. Ferraro, would you like to speak to it?

Mr. Ferraro: I could use many of the arguments Mr. McFadden and Mr. Ashe used previously. In brevity, suffice it to say that, in my view, if you play the numbers game, you could have outside directors having a substantial portion of control of that company.

You can get into an argument that maybe all directors should own a portion thereof and that is not necessarily bad. But if the intent, and I think the intent of the first motion we just passed, Mr. McFadden's and Mr. Ashe's, is to protect the consumer to a greater degree, then I think it would make sense to put a further qualification on the percentage an outside director could hold.

I will conclude with an analogy. You could have a board of 15 directors, and eight directors could hold nine per cent each. I suggest to you that one can look at that and say, "Are they really outside directors?" They could, for various reasons, be--well, I will not get into that. I will conclude by saying I think it is in the public interest to put a further qualification on it.

Mr. Chairman: Any further discussion? Are you ready to vote? This is on Mr. Ferraro's amendment to clause 89(3)(a). All those in favour?

Motion agreed to.

Mr. Chairman: Shall clause 89(3)(a), as amended, carry? Carried.

There is a proposal from the ministry on clause 89(3)(d).

Mr. Ashe: Do you mean it is different from the one in the book?

Mr. Chairman: No, the one in the book has been changed. Any discussion? Shall clause 89(3)(d), as amended, carry? Carried.

Section 89, as amended, agreed to.

Mr. Chairman: Next is section 105. We have a motion, I believe from Mr. Ashe, that section 105 be reopened.

Hon. Mr. Kwinter: Just for clarification, it was section 108 but it really belongs in section 105. It was 108 that was stood down, not 105, but we have to go to 105 because--

Mr. Chairman: The clerk informs me that both 105 and 108 were passed.

Hon. Mr. Kwinter: We have to vote to reopen.

Mr. Chairman: They both have to be reopened.

Hon. Mr. Kwinter: Right.

Mr. Chairman: Perhaps it would make sense to discuss sections 105 and 108 together.

Mr. Ashe: We are not going to change that 108. When I brought it up originally yesterday, it was relative to section 108, but I am advised that, as far as the ministry is concerned, my concern is more properly taken care of with section 105. On that basis, I would move that section 105 be reopened and section 108 can remain as it is.

Mr. Chairman: Does anyone else in favour of reopening section 105 wish to speak to it? Is there anyone opposed to reopening section 105? I am sorry, do you wish to speak to it?

Mr. Morin-Strom: I would like to know what the government's position is on this one.

Hon. Mr. Kwinter: We agree. We have no problem with it.

Mr. Chairman: Does anyone else wish to speak in favour of opening section 105? Is there anyone opposed to opening section 105? The government agrees? Agreed.

On section 105:

Mr. Chairman: Section 105 is open. Mr. Ashe's amendment is in front of you, amending subsection 105(6). Any discussion? We have already discussed it.

Interjection: Do we have to vote to reopen?

Mr. Chairman: No, we are open now and the motion is on the floor.

The margin heading would be "defence."

Mr. Ashe moves that section 105 of the bill be amended by adding thereto the following subsection:

"(7) A director is not liable under this section or under section 107 in respect of anything done in reliance on a report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to the report, if the director acts in good faith, with reasonable grounds and after reasonable investigation."

Mr. Ashe: The idea behind this one, and I think the government has already indicated it concurs, is that we were at the point of making the responsibility on the directors so onerous that, once the directorships out there became aware of their responsibility--which I think was a little too onerous--you would not be able to get directors at all. This says you still have to do things on your own and act in good faith and with reasonable grounds and do your own investigation, but you have to be able to rely to some degree on professionals who put reports in front of you; namely, lawyers, accountants, engineers, appraisers or other persons whose profession lends credibility to the report that is under consideration.

Mr. Chairman: By way of clarification, if you are looking at your book, you will notice section 105 had only five subsections. We have already passed a subsection 105(6), which was the government subsection. The motion is subsection 105(7), as Mr. Ashe has indicated. Is there any discussion?

Mr. Morin-Strom: How does this section compare with similar sections under other, analogous acts, such as the Business Corporations Act?

Ms. Parrish: It is a higher standard than that under the Business Corporations Act.

Mr. Ashe: Not less; it is more.

Ms. Parrish: Yes, it is a higher standard than under the OBCA. I would also suggest it is a higher standard than the common law. Probably the closest you would come to it is the standard under the Securities Act; it is closest to that standard. I would say that in some areas it is higher in the sense that because you are dealing with a different sort of institution, you would expect a higher standard than if you were manufacturing zippers. The closest standard is the Securities Act. It is higher than the common law and higher than the OBCA, because they have to demonstrate they had reasonable grounds and reasonable investigation.

Mr. Morin-Strom: Why would you not take the Securities Act provision as being the proper one, if that is the toughest?

Ms. Parrish: They actually are; the only real difference in the standard is just wording. The Securities Act standard is the same standard, it is just that in the Securities Act they have all this stuff about misrepresentations and prospectuses and things, which is not relevant. But it is the same standard, the same concept; it has just been drafted to be appropriate to the kind of activities these directors are doing. I think I

recall that clause 126(3)(c) of the Securities Act is the sort of relevant kind of language, but it deals with prospectuses.

Mr. Partington: On the last part, "after reasonable investigation," if the director acts on an issue after receiving professional reports, what sort of investigation is he supposed to undertake before moving on an issue? Perhaps you would explain that to me. Assuming a director acts in good faith and on reasonable grounds and with professional reports before him, is he still liable if he does not make certain reasonable investigation?

Ms. Parrish: I think the idea is that this would be something the courts would decide. The idea is that you do not simply say, "Oh, a lawyer told me it was all right, so I am going to do it," or, "An appraiser told me it is worth $10 million and I am not going to look beyond that." I think the idea is that under certain circumstances it might be reasonable to ask for a second opinion; under other circumstances it might be reasonable to interrogate the person, bring him forward and say, "Why is it like this?" and so on.

I think in each case it would be different. What would be a reasonable investigation for a $2-million deal is obviously going to be different than for a $100-million deal. For example, if a director looked at a $100-million deal, that was a major deal, and relied upon sort of back-of-the-envelope scribbling of an articling student, that obviously would be insufficient.

Mr. Partington: In your definition, if he had three qualified appraisals before him, he might still have to make some "reasonable investigation," whatever that means.

Ms. Parrish: Yes. He has to turn his mind to the issues before him.

Mr. Ashe: It is his ultimate responsibility, but it is part of his criteria that he can weigh his facts.

Hon. Mr. Kwinter: Yes. He has the obligation to do that, but once he makes it, if he is challenged as a result of his actions, he has the protection of saying: "Here is where I got this information. I did not just pull it out of a hat." That is the protection we are trying to give him. He has to make the decision. He does not say to his lawyer, "You tell me what I should be doing." The lawyer will give him the legal advice, and on the basis of that, if he makes that decision, he can rely on any professional who can bring professional capability to the issue as his defence. That is really what we are saying.

Mr. Partington: I am saying, and I will not belabour the point, he could do that but still not meet the test because he has relied on that professional input and has not gone out himself and made a reasonable investigation. That is a risk under this definition.

Hon. Mr. Kwinter: That is a risk that he runs. What we are trying to do is bring accountability to his role as a director.

Mr. Partington: Sure. Okay. That is great.

Mr. McFadden: I think the problem we get into with this legislation is what potentially could be its illogical inconsistencies. On the one hand, what we are seeking to do under this legislation is to secure the services, it would seem to me, of the best-quality people possible, informed business

people who behave in a business-like manner, are honest, have integrity and are careful. We want those kind of people to become directors of companies.

Mr. Ferraro: Not just those kind of people. We want some consumers sometimes.

Mr. McFadden: You want consumers, but I am talking about knowledgeable, honest people.

Mr. Ferraro: Are you saying consumers are not knowledgeable and honest?

Mr. McFadden: No, I was not saying consumers. I am just talking about people in the generic sense.

Mr. Ferraro: Okay.

Mr. Ramsay: Brand-name people.

Mr. McFadden: That is right. The thing we were running into, and I think this amendment certainly helps a lot, is that with some of the standards in here, the prudent, careful, knowledgeable person would not want to become a director of a company. Frankly, what you may find is people are not very careful because they do not bother to check the act to find what a legal burden they have gotten themselves into by signing on as a director. So without an amendment at least like this, the burden is intolerable and the well-informed person we want as a director would not want to become a director of any company with these kind of burdens. You have to at least allow them the right to rely on professional advice. Obviously, they should ask a question.

If XYZ Appraisal Institute shows up with no credibility and gives a garbage appraisal, a director should be asking who they are, what their qualifications are, and should be sure that the board is getting proper information. But provided the professional help is reputable, they should be able to rely on that and not find themselves subject to lawsuit. I think this is a minimum protection for directors. Otherwise, trust companies in particular will have a difficult time finding anybody we would want to serve on their boards.

Mr. Haggerty: You are not suggesting leaving it open for MPPs to be appointed as directors of these things?

Mr. Chairman: Is there any further discussion of Mr. Ashe's amendment? Are you ready to vote on it? Do you all understand what you are voting on?

Mr. Ferraro: Can I get some legal advice before I vote on this?

Mr. Ashe: If you want to pay for it, David will give you some legal advice.

Mr. Chairman: All those in favour? Opposed? Carried.

Section 105, as amended, agreed to.

On section 118:

Mr. Chairman: You may recall there was a debate already on this and

we put the vote over and did not take it, the issue being the government initially suggesting auditors should have some responsibility for contraventions of the Criminal Code and other laws in a very umbrella sense. The auditors objected. The government took countenance of their objection and a couple of members preferred the original definition, which said under clause 118(1)(c), "there has been a contravention of the Criminal Code (Canada)," or under clause (d), "there has been a contravention of any other law the contravention of which may affect the corporation's ability to carry on or transact business."

1700

Mr. Ashe: What was their concern? It says "in the auditor's opinion." In other words, it seems to me there is an onus that says, "If the auditor becomes aware that in his opinion there are criminal activities, the board of directors of the provincial corporation should be advised." Why would they have concerns with that? It seems to me they are abrogating at least part of their responsibilities. Albeit they might say they are only numbers auditors, in my view their responsibility goes a little deeper than that.

Mr. Chairman: Whom are you concerned about?

Mr. Ashe: What was the argument of the auditors in saying that was too onerous?

Mr. Chairman: I think they were saying they were not experts in criminal law and not necessarily knowledgeable about other laws that might be relevant.

Mr. Ashe: That is fine. It does not say "in the auditor's legal opinion." It says "in the auditor's opinion."

Mr. McFadden: I think you are asking auditors to come in to provide you with advice related to the financial affairs of a company. The difficulty with the way the original wording was set out is that I think a prudent auditor, given the change in environment and court liabilities and so on and so forth, would be almost obliged with the original wording to have legal people involved in preparing the annual reports to companies on criminal matters. "A contravention of any other law" is a very sweeping situation. What law are we talking about, customs and excise? Are we talking here about zoning bylaws? It could be almost anything.

Mr. Ferraro: Health infractions.

Mr. McFadden: Yes, it is an unbelievably wide net. I think what we are suggesting here, and I find myself arguing the government's amendment--

Mr. Ferraro: Do not argue; just vote.

Hon. Mr. Kwinter: You are doing a good job. Keep it up.

Mr. McFadden: This is a well thought out amendment. If you take a look at it, I suggest that the standards set out in the government motion cover the kinds of things an auditor should be expected to review and give an opinion on. It is far too broad there. I think it would be illogical and virtually impossible for an auditor to do his job if you leave clauses (c) and (d) there.

What we want is auditors, reputable firms, to go in and do a good job for a company and report to the shareholders and to the government on the financial strength of the company. We do not want them to be legal experts. Adding clauses (c) and (d)--there are laws that are not of a financial nature and could involve any number of subjects--is not something we should be exacting either of companies or of the accounting field.

Mr. Chairman: We have already had some debate on this. Mr. Haggerty, do you want to speak again?

Mr. Haggerty: I raised the matter the other day. Some place along the line, somebody has to flag anything that may be in contravention of this act. You can have lawyers who may be on a board of directors or even representing the industry in this area but who are not knowledgeable in the area of criminal law. How do you define it? We have to have some authority some place that says there is a responsibility in this area and that somebody working for the industry, either an auditor or lawyer, has to be accountable for any misgivings that may arise. I see nothing wrong with having it left there. If you get into some of these larg firms of accountants or auditors, usually some of them have some knowledge of law behind them. I see nothing wrong with it. I think you have to have something to get the signal out to the industry that we do not want these things that happened in the past. This is why I support leaving it there; somebody has to be accountable.

Mr. Partington: I tend to agree with the amendment that is being proposed. Clearly, even if you say it is in the opinion of the auditors, there is an onus on the auditors to try to consider these acts. Most of them are probably not even familiar with the acts, let alone the sections of the acts. I think the amendment covers the situation very adequately.

Hon. Mr. Kwinter: As you know, we put it in, and then when we heard representations from the Institute of Chartered Accountants of Ontario, we recommended it be taken out. We have had some good conversations. I really want to thank the institute for its input. We are in the hands of this committee. We will go either way. You decide how you want it to go and that will be fine. We have been on both sides of the issue and we can see the merit on both sides of the issue.

Mr. Chairman: I do not want to go around in circles, but Mr. Morin-Strom, quickly again.

Mr. Morin-Strom: I do not think I am speaking again. This is the first time. Right?

Mr. Chairman: I think you spoke on it earlier, on another day.

Mr. Morin-Strom: Yes, the other day.

Mr. Chairman: I am just reminding everyone that we have had some debate.

Mr. Morin-Strom: At that time I expressed concerns about three specific types of incidents: theft, fraud and misuse of funds. I did not think there was a need to include all types of acts, including the whole Criminal Code or any other law they may find out about. I talked with the Institute of Chartered Accountants and it has assured me that the types of incidents I was

concerned about are covered under the government motion. As a result, I think the original language goes too far and the government motion would be better.

There is only one thing I might say on the government motion that might improve it slightly. The accountants suggested that the word "material" be put in front of "contravention." They suggested it in clauses (b) and (c). They seemed to have the strongest point for having the word "material" in front of "contravention" in clause (c), which could result in very minor reporting errors on tax liabilities on individual statements to depositors or whatever having to be reported right up to the board of directors.

Mr. Chairman: Does the minister wish to adopt an amendment to add that word?

Hon. Mr. Kwinter: Of course, the problem is that when you start getting that kind of language put in, you have to ask, "What is material?" Then you get into the whole area of, "That was not really a material part of it," or, "Maybe it was." How do you define that? It adds a whole new complication.

Mr. Morin-Strom: Yes, I can understand that being involved, although they say that even if you do not put it in, they still have to make a decision on whether it is significant or not.

Hon. Mr. Kwinter: Yes, but then it is a make-work program for the lawyers.

Mr. Chairman: It sounds as if you might be able to drive a truck through that one.

Mr. Ashe: I agree that there may be some case made that clause (c) is too strong. I am talking about the present words, "there has been a contravention of the Criminal Code (Canada)." Should they really have the onus of knowing those laws? But I do not support the government motion. In fact, if clause (c) were taken out and (d) became (c), I think removing the word "other" still gives them responsibility with latitude.

"In the auditor's opinion...there has been a contravention of any law, the contravention of which...." Again, the key is "in the auditor's opinion." Obviously, you could say "in the auditor's opinion and knowledge"--if you wanted to make it even looser--"there has been a contravention of any law, the contravention of which may affect the corporation's ability to carry on or transact business."

To me, that does not imply the auditor has to become a lawyer and an expert on everything. It is saying you have to use a little common sense that may go beyond the numbers game, and if you see it, you report it. That is reasonable and rational. Therefore, I will not support the government's amendment.

1710

Mr. Ferraro: I have seen a diversity of opinion on some committees but this has to rank with the all-time great ones. I am going to support the amendment. I want to get my points forward as to why I am supporting it. I respect what my colleagues are saying about onus and so forth. We all know politicians are supposed to be experts on everything, but the reality is always somewhat different. What convinces me is that auditors, and we are

speaking basically of reputable auditors in large firms, have a code of ethics, as many professions do. I am not a lawyer but that would have some bearing on an auditor's decision whether to ring the bell. It would also substantiate the fact that these firms, as auditors, are somewhat liable; I think judiciously. I have a concern that not giving them that form of protection would be overlegislating in this case.

Mr. Chairman: Is there any further discussion? Are you ready to vote on the government's proposed amendment to subsection 118(1) standing in the name of Mr. Ferraro? All those in favour of that amendment? Those opposed? It is six to one.

Section 118, as amended, agreed to.

On section 144:

Mr. Chairman: Subsection 144(1) was put off to this point to permit Mr. McFadden to prepare an amendment. The issue has been discussed as to who the decision-making power should rest with.

Mr. McFadden: I toiled long and hard on this amendment.

Interjection: You did?

Mr. McFadden: It was legislative counsel. I believe everybody has a copy of my motion.

Mr. Chairman: Mr. McFadden moves that subsection 144(1) of the bill be struck out and the following substituted therefor:

"(1) Upon the application of a registered corporation, the superintendent may consent to the registered corporation making or entering into any investment or other transaction set out in this part, with a restricted party if, in his or her opinion, the consent is necessary to the wellbeing of the registered corporation and the consent may be subject to such terms and conditions as are set out in the consent."

Mr. McFadden: My amendment would remove the requirement that the Lieutenant Governor in Council consent and replace that with the consent of the superintendent. I do not want to repeat everything I said yesterday, but it is my view that in effect the superintendent is the person who is going to be making the decision anyway. Adding the cabinet in to deal with a thing like this seems to be an added level of approval and complication that is hardly necessary.

I cannot see this kind of matter becoming a matter of real debate or concern within cabinet. My understanding is that this kind of thing would go through cabinet with a rubber stamp anyway. It lacks any real rationale. I think the onus should be on the superintendent to satisfy himself or herself of the standards set out in this section, because that would happen anyway.

In my view, adding "Lieutenant Governor in Council" does nothing except create more paper work and require something to move from the ministry to the cabinet and back again. I do not think there would even be a single case where the cabinet would really enter into a lengthy consideration or discussion of this kind of technical matter. I suggest that this would be a more expeditious

route and would be more congruent, in my view, with the real practice that you would expect to occur within the ministry.

Mr. Morin-Strom: It seems to me that the purpose of this legislation is to define what investments can and cannot be made. Contraventions to the intent of the legislation should have to go to cabinet level as a result of that. I think we should stick with the original government proposal.

Hon. Mr. Kwinter: The Dupré report on financial institutions recommended it be at the cabinet level. We concurred and included it but we are really in the hands of the committee. It does not help you very much. We put forward "the Lieutenant Governor in Council". That is the one we prefer. If the committee decides otherwise, we have no great problem with it.

Mr. Ferraro: This is the first time in a long time to my knowledge, in two years on a committee, that we have had a ministry so open to the committee's wishes. I think that is a refreshing change. It actually makes one feel to a greater degree that one has accomplished something in committee. But that is an aside.

Mr. Ramsay: Maybe we owe you this one.

Mr. Ferraro: Having said that, we hate like hell making decisions.

Hon. Mr. Kwinter: If you want me to get you off the hook, I am not going to.

Mr. Ashe: I think the issue is that the ministry quite rightly, quite appropriately, has some strong positions on some issues and the minister says, "It does not really matter one way or the other; we are in your hands," on the others. This is obviously one of them. For myself, I agree with the amendment.

Mr. Chairman: I think the committee is aware that the ministry has been very diligent in dealing directly with many of the witnesses and taking a lot of the problems off our hands at our request initially. It is to be complimented for that.

Mr. Epp: I am going to support this amendment because I think it is important that the superintendent have something to do.

Mr. Ashe: Today and every second Thursday is pay day; let us make sure he earns his money.

Mr. Haggerty: In sections 143 and 144, when you look at the intent of "the Lieutenant Governor in Council," it is because you are dealing with securities other than those purchased from a government. I am talking about those deposited with trust companies. If they are going to be out selling securities, taking that from trust and selling securities, there should be somebody there who is going to flag this. I do not think it is their responsibility to be moving that once it is in that trust.

Mr. Chairman: All those in favour of Mr. McFadden's amendment to subsection 144(1)? All those opposed?

Motion negatived.

Mr. Chairman: Section 144 remains as it is set out without any changes.

Section 144 agreed to.

1720

On section 165:

Mr. Chairman: There is a motion by Mr. Morin-Strom on subsection 165(4). Would you read it please, Mr. Morin-Strom, and then speak to it?

Mr. Morin-Strom: I would like to replace my motion with the government motion, which came out of the discussion we had in regard to my motion and satisfies my concerns. I believe it is better than what we had previously.

Mr. Chairman: I maybe called your motion out of order in that we have not dealt with section 165. The government of course has proposed amendments to subsection 165(1) in accordance with what is in your printed material. Is there any discussion of that first?

Mr. Ashe: Was section 160 passed in its entirety?

Mr. Chairman: I understand it was. Have I missed something?

Clerk of the Committee: Subsection 165(4) was not carried.

Mr. Chairman: With regard to section 160, it was passed. On section 165, the clerk is telling me that subsections 1, 2 and 3 were passed. All right. I apologize then.

We are back to subsection 165(4). Mr. Morin-Strom's amendment has been withdrawn. I should have dealt with the government amendment first anyway. Everyone has a copy of the government amendment before him.

Hon. Mr. Kwinter: We want to change that. What it says is "exceed 10 per cent." We have discovered that when we deal with subsidiaries, we really should be at the 15 per cent level; 15 per cent would be a more practical suggestion. Do you have any problem with that?

Mr. Morin-Strom: Is that on the common shares?

Hon. Mr. Kwinter: It is 15 per cent on the common shares, and we can explain the ramifications.

Mr. Morin-Strom: I would like to know why, because I thought yesterday you had talked about five per cent as being a typical--

Ms. Parrish: That five per cent in common shares is very high. The only problem is that when we originally drafted this motion that said 10 per cent in common shares--mea culpa, to use my colleague's phrase--we forgot that this section, the 25 per cent share of securities, includes the common shares that the corporation holds in its own subsidiaries. They could have up to five per cent of their assets in their own subsidiaries, like Canada Permanent used to own Canada Trust and so on.

If you stuck them at 10 per cent, it would be kind of low because they would have five per cent in common shares in their own subsidiaries. That

would leave them only five per cent to buy common shares across Canada, which would be a very low level. What we are saying is to move it up to 15 per cent, which would include the common shares of their own subsidiaries. That is what the problem is with the arithmetic, so to speak.

Mr. McFadden: I am trying to clarify then. Are we still 15 per cent or 10 per cent? This is the government motion--

Hon. Mr. Kwinter: We are talking 15 per cent.

Ms. Parrish: We said 10 per cent, and it should be 15 per cent. The reason it should move up that five per cent is to allow for the five per cent that they are allowed to have in common shares of their own subsidiaries. Otherwise, the effective cap on common shares would be five per cent, which is very low; it really does not give them very much flexibility. That is the explanation. It really is a drafting error.

Mr. McFadden: One question I raised in the last meeting was, what is going on out there in the industry, what is the industry practice and what kind of position does this put the industry in? Are we creating a situation where a bunch will have to unload shares in a hurry, or are we in a situation where all companies basically conform now?

Hon. Mr. Kwinter: That is correct. The only thing that was happening is that it was felt in our investigation that we were looking at somewhere in the range of three per cent or four per cent, and that was why 10 per cent was no problem.

What we did not take into account--and it really was a drafting error--was that we were looking at outside common shares, but they are allowed to own up to five per cent of their subsidiary. What we are talking about when we talk about 10 per cent, effectively 15 per cent, is 10 per cent of outside shares because it gives them the five per cent of their wholly owned subsidiary.

Mr. Chairman: Mr. Ferraro moves that subsection 165(4) of the bill be struck out and the following substituted therefor:

"(4) A registered corporation shall not make an investment in securities of a company if, after the investment,

"(a) its holdings of securities of all companies carried on its books would exceed 25 per cent of its total assets; or

"(b) its holdings of common shares of all companies carried on its books would exceed 15 per cent of its total assets."

We may resume discussion. Does anyone else wish to say anything?

Mr. Morin-Strom: The only point I might make is, would it be possible to leave it at the 10 per cent but, rather than "of all companies," put "of all companies excluding its own subsidiary"?

Ms. Parrish: It is possible to do that, yes.

Mr. Morin-Strom: Then that five per cent is dealt with elsewhere.

Ms. Parrish: No, we would have to delete that.

Mr. Morin-Strom: Then they would be allowed 10 per cent outside their own subsidiaries.

Ms. Parrish: It is possible to draft that, yes.

Mr. Chairman: You do not have strong feelings, Mr. Ferraro? It is your motion.

Mr. Ferraro: No, that is fine. If it is agreeable with the government, I do not have a problem.

Hon. Mr. Kwinter: We could do it either way. It seems simpler just to change the figure from 10 to 15. It would give exactly the same effect.

Mr. Morin-Strom: It is not exactly the same, because the 15 per cent allows, for those who do not have subsidiaries, 15 per cent in a mix of nonassociated common shares, which is a riskier situation than the 10 per cent. The 10 per cent is what has been used as a real estate figure, I believe, in another section just before this one.

Ms. Parrish: Yes; 10 per cent of real estate investments.

Hon. Mr. Kwinter: We have no problem with that.

Ms. Parrish: We could simply say that the section does not apply to the shares in the subsidiary or factor it out.

Mr. Chairman: How does this motion read now?

Mr. Ferraro: I am not sure how it would read.

Hon. Mr. Kwinter: We may need a moment to write that.

Mr. Ashe: I appreciate that I had to leave yesterday. May I go back and ask a question? Depending on the answer, I may try to reopen section 160. May I at least be allowed to ask a question of the minister?

Mr. Chairman: Does this deal with subsection 165(4)?

Mr. Ashe: No, section 160.

Mr. Chairman: Can we just finish with subsection 165(4)? There is also an amendment to subsection 165(5). Then we can move back to section 160.

We are setting aside subsection 165(4) for the moment. Mr. Ferraro has a motion on subsection 165(5).

Mr. Ferraro moves that subsection 165(5) of the bill be struck out and the following substituted therefor:

"(5) for the purposes of subsection (4), an investment in securities by a subsidiary of a corporation, other than a mutual fund or securities dealer subsidiary of the corporation, shall be deemed to be an investment by the corporation."

Motion agreed to.

Mr. Chairman: Shall subsection 165(5), as amended, carry? Carried.

We will leave the rest of section 165 until we deal with subsection 165(4), and I will entertain Mr. Ashe's question regarding section 160.

Mr. Ashe: Section 160 is a long section but parts of it put restrictions on the amount of consumer lending, consumer leasing, commercial lending, etc. Appreciating that we have quite a competitive market from the consumer's point of view and we want to keep a very competitive market, is it really necessary to have that kind of restriction, particularly on consumer lending and leasing, where we are not saying that if any given loan went belly up, it has any part of making the company's financial responsibility any less.

In other words, it is not onerus if you have a consumer or a few consumers go bankrupt. Each one is a small part of a total portfolio. Why is it so restrictive from the company's financial stability point of view, which is, as I understand it, one of the main issues of this legislation? I am particularly talking about clause 160(4)(c), as an example.

1730

Hon. Mr. Kwinter: Did we not delete that? Clause 160(4)(c) has been deleted.

Mr. Ashe: Has that been deleted? Subsection 4 is "restrictions on personal loans, commercial lending, leases and conditional sales agreements." My real question is, why?

Ms. Parrish: Why is there a 20 per cent limit on commercial lending and commercial leasing?

Mr. Ashe: Consumer lending and consumer leasing; the commercial is another question.

Ms. Parrish: Under current legislation, loan corporations and trust corporations can invest only seven per cent of their assets in commercial loans and consumer lending. Under this statute, they would be permitted to invest up to 20 per cent in commercial leasing and lending and up to 20 per cent in consumer lending and leasing. In addition, they get five per cent in the basket. So they are going from seven per cent to 25 per cent.

Mr. Ashe: I understand that. This is more generous. I accept that and appreciate that. My question is still why. Why are we putting any limits, if we are thinking of the consumer, and yet still protecting the financial integrity of the company? They cannot possibly put all their eggs in one basket in the sense of dealing with the consumer. It is not as if they can go offshore and loan all their assets in Mexico and then have to write it off. I use that as an example, but there are many I could use. That is my question. Why is there any restriction, appreciating that this is more generous than what they are operating under now? I accept that.

Ms. Parrish: The basic idea of the act's investment provisions is to provide for a balanced portfolio: a certain amount of this, a certain amount of that and so on. Indeed, there is nothing magic about any of the numbers; it is just intended to give a reasonable amount in any area without allowing excessive risk in any particular area.

As a floor, the company is required to have at least 50 per cent of its assets in what are called trustee assets, which is essentially mortgage lending, bonds and so on. With the remaining 50 per cent, they really have a great deal of latitude.

The likelihood is that very few companies will find themselves in any particular problem. The idea, I think, was to allow this latitude, see how that works, maybe assess it and then maybe move the numbers around, but it is very unlikely any company would be hitting at the top of any of those benchmarks, because they have so much lattitude. I guess the idea was to try this out, see how it works, particularly with the smaller companies, and then look at the numbers. There is nothing magic about 20, I admit.

Mr. Ashe: Why have it in at all then? If they are already restricted to half, and considering the nature of the situation we are talking about, it would be impossible for them to go out and take their other half and put it into just one investment, if you want to call it that--

Hon. Mr. Kwinter: No, it is not. That is the point. It is not impossible for them to do that.

Mr. Ashe: I sure guess it would be.

Ms. Parrish: Under the one per cent rule it is diversified, but I think the sense is that it is true that consumer lending is pretty safe, by and large, because even if I do not pay back my car loan, the company is not going to fail. I guess the idea is that for some companies that are heavily regional, if there is a collapse in the regional area and they are heavily into consumer lending, they could get themselves into trouble, not because of the quantum of any one loan but because almost everybody could not pay his loan.

Mr. Ashe: That could happen anyway. The point I am making is that if we are worried about financial integrity as part of the act, that is fine. We are also looking at consumer services; surely that is the other part. It seems to me that in the marketplace, the expanding area in the consumer loan business, which would include consumer leasing operations, has been very helpful to the consumer. Frankly, I think it has made the banks more competitive by necessity, and the trust companies that have gone into this field have been much more imaginative in creating that competitive climate out there. With all those reasons, why restrict them when they are already restricted by other sections--the one per cent, the 50 per cent, etc.?

Mr. Chairman: Are you satisfied?

Mr. Ashe: Not really.

Mr. Chairman: Do you wish to have the matter reopened?

Mr. Ashe: I think I hear the ministry saying, "If we have some pressures later on we can change it, because we really have no problem with it being bigger." All I am saying is that, if you do not have any problem with no restriction, why do you not do it now?

Ms. Parrish: It is not exactly that we do not have a problem; it is just that we do not have any experience. I guess it is an incremental thing. Let us see how this works. Let us see if there is a risk there. After all, we are going from a very small percentage to a very large percentage. I think this is something like $1 billion of excess consumer lending capacity in Ontario. That is a lot of money. It will probably have a positive impact.

Mr. Ashe: It is only petty cash to the government.

Ms. Parrish: It is really intended to be incremental. To that extent, I guess it is a cautious approach. We are dealing with institutions in which caution may be desirable.

Mr. Ferraro: What do the trust companies say?

Ms. Parrish: They would like to be unlimited in consumer lending.

Mr. Chairman: I have to ask you whether or not you want to have it reopened.

Mr. Ashe: Okay. To challenge the committee--I do not think I will be successful, but I will do it anyway--I would ask that section 160 be reopened.

Mr. Chairman: Is there any discussion? Is anybody opposed to section 160 being reopened? I see two hands. That ends the matter.

Mr. Ashe: I said I knew how it was going to turn out.

Mr. Chairman: Moving back to section 165, I believe Mr. Ferraro now has wording for the proposed amendment to subsection 165(4), plus a new subsection 165(4a).

Mr. Ferraro moves that subsection 165(4) of the bill be struck out and the following substituted therefor:

"(4) A registered corporation shall not make an investment in securities of a company if, after the investment,

"(a) its holdings of securities of all companies carried on its books would exceed 25 per cent of its total assets; or

"(b) its holdings of common shares of all companies carried on its books would exceed 10 per cent of its total assets.

"(4a) The shares of a subsidiary of the corporation shall not be included in the calculation of the 10 per cent referred to in clause 4(b)."

Mr. Chairman: Shall subsection 165(4) and subsection 165(4a) carry? Carried.

Subsection 165(5) carried earlier.

Section 165, as amended, agreed to.

On section 168:

Mr. Chairman: Mr. McFadden has an amendment.

Mr. McFadden: Yes. Basically, the argument could be made here on the same grounds. If you look at the various matters listed here, they should fall within the purview of the superintendent. I do not see why the cabinet would be involved in this. I think it lengthens process and it is not going to be getting any sober second thought. It seems to me that it should be left in the hands of the superintendent.

Mr. Chairman: I hope that members will not feel it necessary to repeat their arguments on this. The membership of the committee has varied

slightly. Are you prepared to vote on that amendment? Can I not take it as read? Members agree to take it as read. You have a copy in front of you. It is a lengthy section. Are you ready to vote on Mr. McFadden's amendment to section 168?

All those in favour of Mr. McFadden's amendment?

All those opposed?

Motion negatived.

1740

Mr. Chairman: Mr. Ferraro now has an amendment to section 168.

Mr. Ferraro moves that section 168 of the bill be amended by striking out "bonds, notes, shares, debentures" and "bonds, notes, shares or debentures" where those expressions appear and inserting in lieu thereof in each instance "securities."

All right. Any discussion? All those in favour of the amendment? Carried unanimously.

Motion agreed to.

Mr. Chairman: There are earlier amendments to section 168 that need to be dealt with. One involved putting the word "securities" in already, and there is the new clause 168(f), which is part of Mr. Ferraro's umbrella motion.

Section 168, as amended, agreed to.

On section 199:

Mr. Chairman: Section 199 was discussed earlier, but not voted on.

Mr. McFadden: My understanding on that was that the advice of the Ministry of the Attorney General was being sought with regard to subsection 199(5).

Hon. Mr. Kwinter: I would like to speak on the matter of section 199 of the bill which gives the Lieutenant Governor in Council the authority to issue an order restricting a corporation's registry or directing the superintendent to take possession and control of the corporation's assets, an action which may be taken without giving the corporation an opportunity for a hearing. The corporation could petition cabinet for reconsideration of this situation. This is a very serious power about which some members have quite understandably expressed concern.

Section 199 was introduced into legislation in December 1982 as section 158a of the Loan and Trust Corporations Act. The section was used on January 7, 1983. I am told that those persons involved in drafting the 1982 amendment developed the provisions after a great deal of soul-searching and with full awareness of the seriousness of their proposal.

Their ultimate conclusion was that the welfare of the public had to take precedence and that the accountability of cabinet would ensure that the power was not used lightly or capriciously. At that time, the legislation did not contain effective powers for the regulator to restrict undesirable activities

of corporations and thus, hopefully, prevent such activities from developing into a critical situation.

Bill 116 does contain such provisions. Under most circumstances, it should be possible in the future for the superintendent to put a stop to dangerous activities before the situation becomes critical. You may consider that the new provisions in Bill 116 make parts of section 199 unnecessary, but this is not the case. The new provisions make it more unlikely that section 199 will have to be used, but the possibility still remains.

Situations that affect the solvency of a corporation can develop rapidly through dishonesty or, in some cases, because of events beyond the control of the corporation. Should such a situation occur, only decisive measures can be effective in protecting the public. For these reasons, in my view, section 199 should remain as is, and I should tell the member for Eglinton (Mr. McFadden) that the Attorney General's ministry agrees.

Mr. Chairman: Is there any discussion?

Mr. McFadden: The point I raised, which I hope can be considered and reviewed at some future time, is not, as I mentioned yesterday, the ability of the Lieutenant Governor in Council to seize control of a trust company when evidence becomes clear that fast action is necessary. The main thrust of my comment is more related to subsection 199(5), under which the only way someone can appeal is to petition the same body that originally seized the asset, namely, the cabinet.

My point yesterday was that I thought it would be desirable, where someone has the right to appeal, to be able to have a hearing in that 60-day period. I think it is a complicated issue. Certainly I would not be supportive of an amendment that would in any way weaken the ability of the provincial government to protect the interests of depositors, shareholders and the public generally, but I do think that some consideration should be given to amending subsection 199(5).

I can understand, perhaps, why that cannot be done today, but I would like to recommend strongly to the government that very careful consideration be given to providing for a hearing process and not just a petition process. I think a petition process does not effectively allow room for a discussion, for evidence to be brought in, except in writing.

That could be done on an informal basis, I know, but I would like to suggest that some consideration be given in the time ahead to an amendment to subsection 199(5) which would provide for some form of hearing process before the superintendent or perhaps before a panel. During that time the corporation, the shareholders or management of the company concerned could present evidence to try at least to see if the cabinet would be prepared to reverse itself based upon the eventual evidence before the panel and an eventual ruling by a panel or by the superintendent, whoever might be involved in such a hearing.

I know this is a complicated point. I know there are major interests at stake in this, so I would just like to bring this to the minister's attention and urge that some serious consideration be given to that particular subsection for future reference.

Hon. Mr. Kwinter: It is my urgent and hopeful feeling that we will never have to implement this section of the act, but certainly I will give the

member the undertaking that we will look at it at some time in the future. But, as I say, I hope we never have to implement it.

Mr. Ferraro: I understand what everybody is saying here. I am wondering whether there is magic in the stipulation of 60 days within which a petition can be filed. If, for example, the only recourse someone has is a judicial recourse, you may have the situation we had recently, that someone's decision may change substantially if his shares have been devalued, or whatever the case may be, based on an appraisal in large part, or appraisals of, for example, real estate holdings.

In many cases it may take longer than 60 days, or you could have a number of excuses. The point I am making is whether there is any magic in the number 60 or whether it could be extended. A judicial procedure would take a hell of a lot longer than that.

Hon. Mr. Kwinter: I would suggest that would be up to the discretion of the cabinet. They would have to respond within 60 days, and if they responded, they would state the consequences or the circumstances where it was impossible for them to be able to respond effectively. What this is really saying is that they have 60 days to petition cabinet. Once they petition cabinet, they can make their case.

Mr. Ferraro: My question, though, is, why do you have to stipulate it at 60? Why did you pick 60? Some of them may not be able to make up their minds whether they want to petition cabinet. Maybe they do not want to go the judicial route.

Hon. Mr. Kwinter: You have a situation where, effectively, the government has taken over that asset. It cannot be left in limbo for ever, and 60 days seemed to be a reasonable length of time for someone to come forward and say: "Here is the position. Here is what we would like to do." A period of 30 days would be too short because they may not be able to get their data together. That is why 60 days seemed to be a reasonable time.

Mr. Ferraro: Okay.

Section 199 agreed to.

Mr. Chairman: I look at the clock and I look at the very last section to deal with and I am amazed at how Parkinson's law works: Work expands to fill the time given. That may be what the House leaders are trying to tell us.

Mr. Ferraro moves that subsection 217a(1) of the bill be struck out and the following substituted therefor:

"(1) Within 30 days of deposit made in Ontario to a registered provincial corporation becoming an unclaimed deposit, the corporation shall pay to the Treasurer of Ontario the amount owing to the depositor, including interest, if any, in accordance with the agreement between the corporation and the depositor.

"(1a) Payment to the Treasurer under subsection (1) discharges the corporation from all liability in respect of the deposit."

Hon. Mr. Kwinter: We have no problems with that.

Mr. Ferraro: I understand it is making the trust companies comply with the Bank Act.

Ms. Parrish: It is the same rule as in the Bank Act for unclaimed deposits.

Hon. Mr. Kwinter: We are quite prepared to accept the member's motion.

Section 217a agreed to.

Bill, as amended, ordered to be reported.

Hon. Mr. Kwinter: I would like to thank the chairman and members of the committee for the efforts they have put into this bill. I have been very impressed by the research that has been done, the knowledge and the interest. On behalf of my ministry, I want to thank you for your co-operation in seeing this bill through. It is a precedent. I understand it is the largest bill ever to go through a committee in the history of the Legislature.

Mr. Haggerty: I thought the Mining Act in 1971 was the largest.

Hon. Mr. Kwinter: That is what I understand. It is also the first officially bilingual act. I thank you all again for your participation and your co-operation.

Mr. Chairman: On behalf of the committee, I would like to thank the minister, Ms. Parrish and Mr. Davies for the patience you have had with us, and also the witnesses for the patience you have had with us. We are indeed a lay committee. We appreciate the fact that the witnesses and the ministry, at our request, worked very hard together to get a lot of the problems ironed out before we had our hearings. That made it possible to get this bill through.

The sense of co-operation has been good all round, with the ministry, with the witnesses and, indeed, with all three parties.

The committee adjourned at 5:54 p.m.

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

ORGANIZATION
TRIP TO WASHINGTON

THURSDAY, MAY 28, 1987

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

CHAIRMAN: Cooke, D. R. (Kitchener L)
VICE-CHAIRMAN: Ferraro, R. E. (Wellington South L)
Ashe, G. L. (Durham West PC)
Cordiano, J. (Downsview L)
Haggerty, R. (Erie L)
Mackenzie, R. W. (Hamilton East NDP)
McFadden, D. J. (Eglinton PC)
Morin-Strom, K. (Sault Ste. Marie NDP)
Ramsay, D. (Timiskaming L)
Stephenson, B. M. (York Mills PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:
Knight, D. S. (Halton-Burlington L) for Mr. Cordiano
Partington, P. (Brock PC) for Miss Stephenson

Clerk: Carrozza, F.

Staff:
McLellan, R., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Thursday, May 28, 1987

The committee met at 10:05 a.m. in committee room 1.

ORGANIZATION

Mr. Chairman: The committee will come to order. The clerk has prepared a budget for the 1987-88 fiscal year. There is an explanatory note at the back. Of course, a lot of this has been based on a lot of guesswork. Some of the money, I suppose, is coffee for the last meeting, and very well spent. I hope no money has been spent for coffee for this meeting yet. But in any event, a lot of this is guesswork, based on presumptions that may or may not be accurate.

Mr. Mackenzie: The criticism I would have of it, and it may depend on whether Ontario is still looking at the free trade issue, is that the crucial time is going to be this fall in the decision-making and the finalization of where they are going in Washington. If anything should be in here, if it is a tentative budget, there should be plans and the money for a trip to Washington on the free trade matter. I think you should be looking at three, four, five days--the week--on that. If you are looking for a budget, other than bills that may get referred to this committee, that to me is probably the most important thing that may be referred to it.

Mr. Chairman: Should we be putting that in a budget now?

Mr. Mackenzie: I think you should. I do not know what other committee but the standing committee on finance and economic affairs would get the responsibility, because there is no select committee or anything on it.

Mr. Haggerty: In your comments, you even suggest going there in September or October.

Mr. Morin-Strom: That is the time.

Mr. Haggerty: I think that is too late. I think we want to be there before that.

Mr. Morin-Strom: I think September is the time.

Mr. Mackenzie: Most of their decision-making is going to be in September.

Mr. Morin-Strom: It will be coming to a head at the end of September.

Mr. Haggerty: The reason I raise that point is that if you were to go down even in the latter part of August, if there are some congressmen and senators around the building, you would have more time to spend--

Mr. Mackenzie: As we have been told before, though, August is useless in Washington, and I agree. I think if you are going to do anything, you do it in September.

Mr. Haggerty: I just suggest you go there before they get involved in the bill itself. You can get more consensus of viewpoints before.

Mr. Mackenzie: I am not even sure the developments will say that we have to, but if there is anything that should be in the budget, that should be allowed for in the budget.

Mr. Chairman: Mr. Carrozza wants to clarify.

Clerk of the Committee: There is no reason the committee cannot pass a motion instructing the clerk to place moneys in the budget. I personally do not have authority to put any money in here, but if you instruct me, I will surely do so.

Mr. Mackenzie: I would move that the budget include provisions for a potential five-day trip to Washington.

Mr. Chairman: What you are asking for is that it be included in the budget, even although at the moment we have not made a decision to go to Washington.

Mr. Mackenzie: That is accurate. If it is not used, then it is not used.

Mr. Haggerty: To follow up on our previous visit there as it getting into the final stage of the fast track, as they call it.

Mr. Ferraro: If I may interject, I agree with Bob, but I am just wondering, from a procedural point of view, do we specify that we want to go necessarily to Washington, which we probably will want, or do we just say "contingency" and allude to a trip?

Mr. Mackenzie: The only thing about it is that if there is any place we would be visiting as a result of coming down to the wire and the fast track, it obviously would be Washington, in my opinion.

Mr. Chairman: The chairman's concern may be that in attempting to sell this budget, he may be told to come back when we have planned a trip, as opposed to asking for the money before we plan a trip. In any event, Mr. Carrozza wants to clarify things again.

I welcome Mr. McFadden to the committee. He has brought a photographer with him, of course.

Mr. McFadden: It would take a lot more than this--

Mr. Chairman: I saw your latest householder showing the membership of the whole committee, with the exception of the chairman. I do not know how you work that.

Mr. McFadden: You were not there.

Interjection: You were in the other picture.

Mr. Chairman: All right. In any event, Mr. Carrozza wanted to clarify something.

Clerk of the Committee: To clarify the matter, I shall make inquiries on how much the trip will cost and place that on the agenda. The budget will go before the Board of Internal Economy and the chairman will assist in having it approved. The budget and the trip must be approved by the Board of Internal Economy, so it has the final say on the trip.

Mr. Ferraro: May I ask one further question, not to detract from Mr. Mackenzie's point, which I agree with? What was last year's budget?

Clerk of the Committee: It was about $69,000.

Mr. Ferraro: The total budget for last year was $69,000--including our trip?

Clerk of the Committee: No; that has not gone through yet. There was a supplementary of another $50,000; so it is comparable to what you have here this year. The bills have not gone through.

Mr. McFadden: The other thing to remember is that we did not really start until the fall. It was not a full year's budget.

Mr. Chairman: I recall the trip budget was about $15,000, and we fell short of that.

Clerk of the Committee: That is correct.

Mr. Chairman: That included our consultant.

Mr. Ferraro: It was that dinner at Roy Rogers.

Mr. Chairman: Not the Roy Rogers one. We cooked our own meal at Roy Rogers.

Mr. McFadden: Rick and I went to Roy Rogers.

Mr. Chairman: This is already considerably more than last year. Why is that?

Clerk of the Committee: You will be meeting two weeks more than last year. There was a request from Mr. Foulds stating that you require more time for the budget review.

Mr. Chairman: That is reasonable.

Clerk of the Committee: There are also moneys here for extra advertising. I must state that the advertising for all the English dailies comes to about $16,000 per one-shot advertising. There is money here for three advertisings. Last year we had three advertisings--one for Bill 26, one for Bill 116 and one for the budget review.

Mr. Chairman: If I were to be questioned on that by the Board of Internal Economy, I would say it would have been wise for the House leaders to have given us more sitting time while the sessions are on and they should bear the brunt of the cost.

Clerk of the Committee: That is a correct statement.

Mr. Chairman: What motion do we have?

Clerk of the Committee: Mr. Mackenzie moved that the committee have provision in the budget for a Washington trip of five days.

Mr. Ferraro: It is perhaps a ridiculous question, but where is the next session of the General Agreement on Tariffs and Trade? The Tokyo round?

Mr. Chairman: Uruguay.

Mr. Ferraro: Not Tokyo; Uruguay. All right, I will wake up.

Interjections.

Mr. Ferraro: I am not thinking about going to Uruguay, obviously, but is there any information on GATT that we may want to get a trip to New York or something like that? Now is the time to do it, as opposed to after the fact.

Mr. Chairman: What we are being asked is if there is any value in looking at a trip to a place such as--I think we picked New York out of a hat--that might assist us in looking at GATT in those regions.

Mr. Ferraro: Probably not.

Mr. McFadden: It seems to me that if we want to find out anything about GATT, we are more likely to find out about it in Washington than in New York, if we want to make that one of our focuses as a place to go. We might be able to justify a visit to GATT headquarters, but I would find it hard to justify a trip to Uruguay. I question whether we could justify sending all members of the committee and staff that far. I could see sending a representative from each caucus, perhaps the chairman or someone like that. Otherwise, it could be a very expensive trip to Europe.

Mr. Ferraro: If it is good enough for Butch Cassidy and the Sundance Kid, it is good enough for the chairman.

Mr. Chairman: That is right.

Mr. McFadden: On the other hand, I would like to support Mr. Mackenzie's motion in terms of providing for a further follow-up visit to Washington. The one thing that was clearly established on our last visit was the value of these visits. If we can get in the pattern of doing it periodically, dealing with issues of interest on both sides, I think that is a valuable thing to do. So I would support Mr. Mackenzie's motion on that.

Mr. Chairman: May I ask the clerk, would you prefer that we pass the budget as is and that you prepare an amendment for next week, or would you prefer that we send it back to you now for revision?

Clerk of the Committee: It would be best if you would instruct me to provide for the trip. If you wish to go the same route we took last year, we went with a consultant, J. O. Associates, or to go through the embassy, then I must provide for moneys for the consultants.

Mr. Chairman: But you would rather we sent this back to you for revision and not pass anything this morning?

Clerk of the Committee: Yes.

Mr. Chairman: That being the case, rather than entertaining a motion to pass this budget, I think it would be wise to send it back and we will consider it again next week.

The issue we are being asked about is, should we be including in the budget for a trip to Washington the cost of a consultant?

Clerk of the Committee: There is a motion, so we could vote on the motion.

Mr. Chairman: That would perhaps be an amendment to the motion. I see Mr. Mackenzie nodding.

Mr. Mackenzie: It would be a friendly amendment. I would be willing to accept that we refer the budget back to include the cost of a Washington trip and then bring it back next week.

Mr. Ashe: Have we got an idea what the consultant fees were relating to the last trip?

Clerk of the Committee: She charged $75 an hour, which is comparable to the fee of a consultant. It would depend on how many hours you wished to hire her for. The last one came to US$6,000, so it would be about $7,500 Canadian.

Mr. Ashe: I just wanted to get some feel for whether we were talking about $50,000 or that range.

Mr. Chairman: Because we were such frugal members, our total costs were still less than the budget we were given, which initially did not take into consideration the consultant, did it?

Clerk of the Committee: No.

Mr. Chairman: The $15,000 was a round figure that was the norm, and we still ended up spending less than that even though about $9,000 or $10,000 of it went to the consultant.

Mr. Haggerty: The problem was we worked so darned hard, we did not have a chance to get a meal.

Mr. Chairman: Right. That is it.

Mr. Haggerty: I want to ask one question, making reference to the budget for advertising; that is a pretty hefty sum, $40,000. Is there not a better way that we can notify the public out there, even by letter, rather than advertising in the papers, particularly concerning the budget? We know the people who are interested in coming. That is a pretty high item, $40,000.

Mr. Chairman: We usually debate that. I think in each case, we had a debate on whether advertising was appropriate, and we decided in those three cases it was.

Clerk of the Committee: To answer your question, the advertising cost is $16,000 per advertising. That includes only the English dailies. If we were to include French dailies and the ethnic weeklies, we would be talking substantially large amounts. To give you an example, we are going to advertise Bill 80, and I have been quoted $40,000.

Mr. Mackenzie: If a bill is referred to this committee it has to go the advertising route, and you are not high on that. It has to be anticipated.

Mr. McFadden: What you are referring to there is not just the budget. You are referring to everything that is coming before our committee, are you not?

Clerk of the Committee: That is right.

Mr. McFadden: I do not think $40,000 is unreasonable for the whole year. Now, maybe we will not even need that amount--

Mr. Mackenzie: Unless you cut off advertising about issues, and you know the flak you would get if that happened if you have a key bill before the committee.

Mr. Ashe: You cannot win.

Motion agreed to.

Mr. Ferraro: On a point of order, Mr. Chairman: I think there has been some consensus to sit in on the private members' bills and that if we can, the committee should disband and we should be part of the House, I think, for discussion of the second bill.

Mr. Chairman: That is certainly the chairman's feeling. Again, it speaks to the issue of our having to meet during these two hours, but I do not sense any value in raising that issue again with the House leaders, unless someone else knows something I do not know.

Mr. McFadden: I raised it in the House. I went over this whole thing once again with the government House leader. I told him what a valuable and vital role this committee could have, and then I went on to point out to him that he was limiting our role. He grinned and clapped, but I am not sure we are getting anywhere.

1020

Mr. Ashe: Mr. Chairman, I agree with you. We are not going to get any changes now, but I still think the committee should keep at it, at least to get a recognition by the House leaders that for the next time around--I am talking about the next House, frankly--if they are going to continue to look upon this as an important standing committee, it will just have to be changed, or as far as I am concerned they might as well disband it and just mix it in with all the others. It is kind of ludicrous, it really is.

Mr. Chairman: The thought has crossed the chairman's mind too.

Would it be appropriate, in order to continue our pressure, to start our meetings earlier again? I know that raised some fuss in the past, but I know that was one thing that did impress the House leaders. They knew we meant business and we were trying to--

Mr. Ashe: But they did not do anything about it, so we did not impress them very much.

Mr. Chairman: I would suggest to the committee that it might be the first step in going back at them again.

Mr. McFadden: Are you suggesting nine o'clock?

Mr. Chairman: Yes, or 9:15 a.m. Nine o'clock usually starts at 9:15 a.m.

Mr. Ashe: If it is not my tennis morning, I am here anyway. I am here in my office between 7:30 a.m. and 7:45 a.m. Having said that, I do not

think I want to be over here for nine o'clock. Maybe I will compromise at 9:30 a.m. I find that in that first hour and a half to two hours, I can get done more of the paperwork that continues to pile up than all the rest of the day combined; because one is in, one is out, one is in the House, one is at the committee, one is on the phone, etc. I am just not prepared to give all that time up.

We are obviously not getting any co-operation from the House leaders, so why should we try to buy all the extra time from the time we are doing other things?

Mr. Mackenzie: My feeling would be to leave it at the current 10 o'clock starting time. There are problems with some people getting into town on some mornings. There is a problem, in our caucus at least, with a question period meeting at 9:30 every morning. It just disturbs too many other arrangements. Plus, I have some reservations about being the only committee of the House that has decided it is going to start sitting at nine when the others all start at 10.

Mr. McFadden: I would be agreeable to a 9:30 a.m. start, but that seems to conflict with the New Democratic Party's question period meetings.

I do not know if it is worth going after this again, but I do think, particularly where we are working down to preparing any reports, which I gather we are heading towards right now, that for us to be stuck with two hours on Thursday morning, we are not going to get anywhere between now and the end of June, knowing the normal thing, because this morning we are pretty well stopped, as Mr. Ferraro has pointed out.

I am wondering if, when we get around to the report, that we simply look for some extra time somewhere just to finish the job, otherwise we wait until the adjournment. It is very difficult to get anywhere in two hours on Thursday morning. What we are heading into now, unless we are referred some major business or minor business from the House, is working on reports. I have worked through a number of reports for this committee, and you cannot get much done in an hour or an hour and a half, which is effectively the amount of working time we have available to us.

Mr. Chairman: Are you prepared to make a motion, Mr. McFadden, or are you demurring to Mr. Mackenzie's concern?

Mr. McFadden: Speaking for myself, I go along with Mr. Mackenzie's concern about not starting before 10. I will put it in a motion if you want, but I do not think it is needed right now to work on our agenda. When we have decided exactly what we want to achieve within the next month or so, maybe the scheduling committee should sit down--and I do not know who is now on that scheduling committee--and work out what time we need. If Thursday morning is adequate, fine. If it is not, we should go to the House leaders and at least get permission to meet enough to finish this up.

Mr. Chairman: All right, we will let the matter sit for now.

There are two other matters that I have placed on the agenda. The one we are obligated to deal with, in that we indicated in an interim report to the House that we would be dealing with it in the spring--and we, of course, did a lot of work on it in the pre-budget hearings--is corporate concentration.

The other is a matter that was raised with me by both Mr. Ferraro and

Mr. McFadden; that is, perhaps it would be of use to the House that we have a report on our trip to Washington. In anticipation that the members of the committee would like that, Mr. McLellan has prepared a document entitled Washington Delegation: Canada-US Bilateral Trade Negotiations, which is a very thick compendium of everything we did and saw. I do not know whether Roy Rogers is in here.

Mr. McFadden: (Inaudible) Franco is in here.

Mr. Ferraro: That is not the one Franco (inaudible).

Mr. Chairman: No, it says 50/86-87.

Mr. Ferraro: Did you hand them out yet?

Clerk of the Committee: I handed them out last week at the very end of it.

Mr. Chairman: I am sorry, I thought you had these.

Clerk of the Committee: Catherine Evans gave them out the last time we met, in the afternoon, but I have some copies here.

Mr. Ferraro: I did not get one.

Mr. Ashe: What I wonder is what Ray does in all his spare time.

Mr. Chairman: This has certainly been a lot of work. Basically, of course, he took notes while he was down there. He has covered pretty well every issue that was raised.

If you wish to consider that, there could be a motion to that effect first, I think. The chairman cannot presume that you want to make a report to the Legislature. We have never been asked to do so by the Legislature.

Mr. Ferraro: I have no reluctance, if you want that motion to move that. I do not think it has to be anything of great length, but I do think personally--for me, anyway--it was one of the most rewarding trips. There are some salient points I think we should bring to the attention of the House.

Clerk of the Committee: We really do not need a motion here.

Mr. Chairman: We do not need a motion. All right.

Clerk of the Committee: If I may, Mr. Ferraro, under our standing orders, this committee can make observations, opinions and recommendations to the House.

Mr. Ferraro: Nobody will read the damn thing anyway, but I think we should get a couple of pages in there.

Mr. Chairman: I was simply not wishing to be presumptuous and put it on the agenda unless the committee wanted to report. I was just pointing out that there is no obligation here. Am I hearing a consensus, then, that we discuss a report?

Mr. Ashe: Going back to what was said about who reads it, frankly, I think we should do something. This is an excellent document for our purposes,

but as far as what we table in the House is concerned, it has to be a real précis of three, four, five or six pages, that kind of thing. If we want anybody else to read it, it has to be really short. I think this is very helpful for the members of the committee, but nobody else will read it.

Mr. McLellan: As you say, this document is far too long and no one will ever read it. The reason I have pulled it together is for our purposes.

Mr. Ashe: I appreciate that.

Mr. McLellan: We can use it to taper it down. Even if you want to make a three-page statement, at least we will have it all on record in bits and pieces there.

Mr. Ashe: It is a good compilation of all the events, the thrust, the issues, etc.

Mr. Mackenzie: If you are going to do that, I have no difficulty with the report or observations on what took place and the impressions the trip created, but I think you have to stay away from recommendations or a formal report. That might be a little more difficult. I think it is more under the observation of information and impressions that were received by the committee in Washington.

Mr. Ashe: We have said that. It just depends on the terminology. I think one of the things that most of us ended up with--at least even from the discussion, and it was said really by the select committee before--was that it should become a regular event, whether it is by this committee or somebody else. If they do not give it any more time, it should be somebody else, I suppose, but it should happen on a regular basis. I think that should be a very specific observation and recommendation.

1030

Mr. Ferraro: If I could interject, I understand what Mr. Mackenzie is saying, but my intent is, for example, to get away from a recommendation which in essence would reinforce a previous recommendation in one of our reports. I think what had satisfied me personally, and I do not wish to speak for other members of the committee, was the fact that, with the exception of Gotlieb and that introverted individual assistant, we need some salesmen down there.

Quite frankly, my intention in this report was to re-emphasize our recommendation that we need a better presence in Washington, to say the least. That is my one bugaboo, and I suspect other members have their opinions on it, which I would love to hear.

Mr. Morin-Strom: I think if we put in a report, it would have to be very tough on the whole negotiations that are going on and the mistake that was made by the government in ever entering them.

Mr. Ashe: That will be your opinion.

Mr. Morin-Strom: There is a very strong likelihood that we would want to prepare a minority report.

Mr. Ashe: I am sure of that.

Mr. Chairman: I am sorry, I was listening to Mr. McLellan. What was the reason for--

Mr. Morin-Strom: I say that unless the report is extremely tough on the negotiations and the prospects for an agreement and the mistake that was made by ever entering into such negotiations, we would have to prepare a minority report.

Mr. McFadden: I think that is polemics. I think what Rick has proposed is basically that, in terms of bilateral issues that affect Ontario, it is worth while for Ontario to do two things: first, to have a regular business of legislators on specific agenda items; and second, to have a somewhat more vigorous presence in Washington.

I think we can say that. At least, I think I can say it and I think our party and, I hope, the Liberal caucus may be able to agree on that. Maybe the New Democratic Party does not feel we should do either of those, but it seems to me those two points can and should be made.

As for talking about the trade talks, this was not particularly the subject of our visit. It was not the main topic, and there is nothing in the evidence of that trip to prove what Mr. Morin-Strom has said. That is his particular conclusion, which is not based on the evidence of the various people we met with. In fact, if anything, they said it was encouraging and were quite supportive of having talks with Canada in trying to work out an accord.

I think where we are at is basically this: I would think we would go along with Rick's recommendation to cover at least those two points, which I think we can agree on. I think that is of value on an ongoing basis whether or not we have a trade agreement. But to get into some polemics about whether or not we should ever have trade talks or when and so on is something I think we have debated before. I do not think there is any reason for a minority report unless you are proposing to disagree with the idea of Ontario having some ongoing presence in Washington. All I heard from Rick and that I think we would support is what he said.

Mr. Chairman: In actual fact, I am thinking we did not actually meet with any negotiators.

Mr. McFadden: That is right. We were not there for that purpose.

Mr. Chairman: Although we heard comments, certainly, one way and the other on the negotiations.

Mr. Ferraro: I appreciate Mr. McFadden's comment. I am wondering if Karl could expand a little bit on why his party would want to take a slam, notwithstanding the fact of an impending election, at something that is after the fact? If I understand you correctly, Karl, you are proposing a dissenting report basically saying: "We should never have entered into the negotiations. It is a big mistake and look where we are now."

Mr. Morin-Strom: Just as one of the more startling examples, the meeting with Senator Matsunaga has to be highlighted. He was a key participant in getting us involved in this whole situation and he obviously still has no understanding whatsoever of the Canadian reality. I think our report has to reflect what we found out from the people we have talked to and the prospects we have.

Mr. Ferraro: I appreciate what you are saying but really, are you not reinforcing the idea that our presence--and you know the reality is that they have no understanding of Canadian reality. I agree with you--but is that not, part and parcel, our fault, because we do not have the presence there giving the facts?

The next thing you know Senator Heinz is quoting from a piece of paper that David handed him, giving him the facts. What more blatant example is there of an inadequate system of communication? I think it is our responsibility to bring it to them.

Now, if you want to go--

Mr. Morin-Strom: I do not know how you can say they are prepared or reformed to the point of being able to conclude a free trade agreement at this point. I do not think that reflects Canadian reality.

Mr. Ferraro: I do not think--

Mr. Morin-Strom: We are getting close to the crunch on the fast-track method at this point.

Mr. Ferraro: That is right. We could have a report out this fall. I am trying to figure out what benefit there is now to say, "You guys should never have got into it."

Mr. Morin-Strom: We are going to have to get into agreement on the various recommendations the committee may want to include in this report and we will do an assessment of whether we agree with those or whether we have to issue a minority report.

Mr. Ferraro: The election is getting closer.

Mr. Mackenzie: I should also point out it is far from after the fact, Mr. Ferraro. This whole thing is still very much a debate in the public's mind.

Mr. Ferraro: I do not disagree. We have not ratified it, either.

Mr. Haggerty: The understanding I have of the free trade issue is that I do not think there is too much that we, as Canadians, can do. It is their legislation and we cannot tell them what to do in their country. They have us in a corner. We are going to have to go to them, and that is what we are doing. When you talk about negotiations: yes, if it were a bill here in Canada, we could sit down and talk to the other provinces, but this is a different country altogether.

It may even be in violation of the General Agreement on Tariffs and Trade at the present time. I do not know. All I am saying is you have no choice here as Canadians but to go to them, because it is their legislation. You are going to have to work out the best deal you can with them. You may not like it, but I can say this much: The information coming out of Washington right now is that the bill, even though it may be on the fast track, is being watered down considerably, so I think they are going to show some flexibility in this area.

Mr. Morin-Strom: We do not want a trade agreement. It is a whole different thing. Their bill has nothing to do with the fast track.

Mr. Haggerty: That is right. That is the whole thing, that whatever is in that bill is part of the trade agreement.

Mr. Morin-Strom: But that is nothing to do with the free trade negotiations.

Mr. Haggerty: Certainly it is.

Mr. Morin-Strom: That is not.

Mr. Haggerty: You have to bargain with them on that bill.

Mr. Ferraro: May I move then that we try to compile a brief report to see if we can get consensus, which we probably will not, and then make a determination?

Mr. Chairman: You are moving that we file a brief report?

Mr. Ferraro: I am moving that we work on a report.

Mr. Chairman: A brief report. Okay. Is that as far as we have got?

Mr. Ferraro moves that the committee work on a brief report.

Motion agreed to.

Mr. Chairman: What are we going to say in the brief report?

Mr. Ashe: That is the hard part.

Mr. Mackenzie: As I suggested at the beginning, I think it is still valid, Mr. Chairman, that you could write a brief report on the observations of the trip down there. You might be able to carve out whether there is a need for an additional Canadian presence.

My point was that, if you are making a formal report with any specific recommendations, then you are opening up the whole thing again. I think that is where you are going to have to look at what kind of agreement you will get on a report.

Mr. Ferraro: Can we make observations instead of recommendations?

Mr. Mackenzie: I think you can make observations if you want.

Mr. Chairman: But what are your reflections, or what is the New Democratic Party's reflection on the suggestion that there should be an observation that we are not doing a good enough selling job and that we should be more active in selling Ontario to the United States in Washington?

Mr. Foulds: It depends on how you use the term "selling."

Mr. Ferraro: Communicating.

Mr. Foulds: Selling and selling out. No way, José.

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Mr. Mackenzie: While all of us have some reservations about the

federal authority in the field of trade and how much the province should be intervening, I do not think any of us would disagree--we have made it ourselves in this committee--with the need for more of an Ontario presence, because we are the key industrial province in the trading and on the Washington scene.

That is why I say your report has to be more observations on your trip and generalities than specific recommendations. If you are getting into recommendations, you are going to get in probably, as Karl says, to a dissent.

Mr. Chairman: It sounds as if we are starting to move towards at least one idea, a consensus. Would it be wise to go off Hansard to continue this discussion?

Mr. Ferraro: Why?

Mr. Chairman: Simply, I think that often when reports are being considered that is done in camera, but I am not asking strongly one way or the other. I am not seeing any interest in it, and so I will drop it.

Mr. Ferraro: Might I just conclude, before Mr. Ashe speaks, by saying, do we want to discuss the report now or schedule it for the next meeting and deal with the other scheduling thing now, which can probably be resolved fairly quickly? It would then allow the members, if they wish, to go into--

Mr. Mackenzie: It makes sense to discuss whatever report you are going to write on Washington next month.

Mr. Chairman: All right. Is it a consensus, then, that we meet next week to write the report? You will all have your material for Mr. McLellan and will have done some more thinking as to what you want to say in the report next week.

Mr. Haggerty: All right. Is that going to be in camera next week?

Mr. Chairman: What about that? Do you want it in camera next week? I am not seeing any reaction at all from anybody. Do we want it to be in camera next week or on the record?

Mr. Foulds: It does not matter.

Mr. Ashe: I cannot see any reason for it to be in camera, frankly.

Mr. Chairman: All right.

Mr. McFadden: We can always go in camera if we find out that we want to.

Mr. Ashe: If we are going to be putting any state secrets out then, yes, we can go temporarily, but I doubt that we will.

Mr. Chairman: All right. Mr. McLellan wants to know if there is anything else you want him to get to you in the interim.

Mr. McFadden: Maybe he can get us the current draft of the latest free trade agreement; right up to date, though.

Mr. Foulds: What might be handy is an update on where the various

pieces of legislation are with regard to the US trade bills; just a one-page chronology of where Senator Heinz's bill is at and where the various legislative things are.

Mr. Chairman: There is another committee information package. Have we got that? It includes an article from the Financial Post this week which has the trade talks schedule. That may be of some assistance.

Interjections.

Mr. Foulds: The US trade legislation.

Mr. Chairman: You want to know--you are talking about the actual legislation, and he has taken notes on that: HR3 and the Senate bill.

Mr. McFadden: And the bill with no legs?

Mr. Chairman: Pardon?

Mr. McFadden: The administration's legislation that has no legs. I have seen it rolling around.

Mr. Chairman: Is there anything else you wanted to say about that report? In the few minutes we have left, maybe we can take a look at what we have to do on corporate concentration.

With the House sitting for the next few weeks at least, it looks as if we will have some opportunity to grapple again with that issue. We have had a lot of evidence. There has been a lot of effort put in on the issue. It was originally something that the Treasurer (Mr. Nixon) asked us for information on in his May 1986 budget.

It is a difficult matter for Mr. McLellan to work on because he was not with us all of that time. In fact, I do not think he was with us very much of that time at all, so he is having to do a lot of regrouping. We did not seem to have a very clear consensus coming forward as to what we wanted to say. We eventually drafted a simple report that said nothing and said we would be back to them later when we had more time.

Mr. McFadden: I think we have said it all if we pass the Loan and Trust Corporations Act. My feeling is that if you look at the report of David Bond, virtually every single heading in there has either been dealt with by the loan and trust legislation or has been changed or moved around in some way by the amendments to the regulations to the Securities Act.

Mr. Chairman: I am sorry. What is it you are looking at right now?

Mr. McFadden: I am looking at this report, 403/86-87, Summary of Recommendations and Presentations to Committee, September 16-October 9, 1986, prepared by David Bond.

You will remember that the focus of our hearings and the presentations we received related to financial institutions because we knew consideration of amendments to the regulations under the Securities Act and to the loan and trust legislation was coming up. As it turns out, those regulations under the Securities Act will be coming into force on June 30.

We have already dealt with clause-by-clause of the loan and trust

legislation. In fact, it is going for third reading this afternoon in the House. Most of the matters covered by David's report, which were the subject of our hearings, have now been dealt with by legislation. I think it would be virtually redundant for us to look at trust companies and financial institutions under provincial jurisdiction all over again, since the government and the Legislature have already made all these decisions.

As it now stands, unless we are proposing to review the Loan and Trust Corporations Act we just passed, review the regulations as well as the Securities Act, I question whether we have the basis for a report that would have any relevance at all to anybody. We have already dealt with the issues in substantive form, or if we have not, the government has already done it.

I am not saying that corporate concentration, as an issue, is dead. I am saying that what seems to be dead from the point of view of any relevance is for this committee to deal with corporate concentration in financial institutions or the financial industry sector, which is what we originally intended to do. Of course, we originally thought this report would be out before we would be facing the passage of the loan and trust legislation and, we hoped, before the new regulation under the Securities Act came into effect. Now, our report would be verging on irrelevant as it relates to the financial services industry. The issue of corporate concentration is still an issue and, I suppose, always will be. I can see going ahead and investigating that, but very clearly, events overtook this whole study.

The last of our witnesses appeared on October 9. Here we are almost in June and all these things have happened. We would really have to call back these witnesses to check with them to see what they would now have to say, because the whole universe in terms of the legislation falling under provincial jurisdiction has been turned upside down as it is. I do not see the relevance of going ahead and making a report based on the witnesses we have had in the course of last year; early last fall. It does not make any sense to me. The issue itself is of continuing interest but I think we really have to look at it from another angle to have any relevance.

Mr. Ferraro: I will try to be brief. I concur wholeheartedly with what Mr. McFadden said on this issue. I would go a little step further to say that in my view, unless we want to get into philosophical arguments, which we all can do about any issue, and file the report in that regard, the whole impetus for our report on corporate concentration is nonexistent to some degree. Quite frankly, I think the committee should get something else on its plate unless it is directed by the House leaders to do something. To be blunt, I think it would be a waste of time.

Mr. Mackenzie: I am a little surprised at the comments I have just heard; either that or I had the wrong impression of the corporate concentration issue. Admittedly, I was probably thinking of it in a more generic term, but the kinds of battles not just in the financial sector--although that was certainly one where there was some concern with some of the bank problems--but also in the whole area of corporate concentration in this country is very much not over; it is very much still there.

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I will have to go back and re-read the reference to this committee, but I had thought that was the concern the Treasurer was expressing. What I am getting now is almost, "Let us drop the issue," and that is--

Mr. McFadden: No, Mr. Mackenzie, you missed the point.

Mr. Mackenzie: That is what I am wondering. Am I picking it up wrong or what? Because I do not think we have dealt at all with whether it is possible to make any recommendations in terms of corporate concentration in this province or in this country. There is a lot of work that can be done there if somebody wants to tackle it, but you tackle some pretty powerful sacred cows when you get into that issue.

Mr. McFadden: I do not recall whether this was during the period when you were not on the committee, but we made a decision last summer, because of the pending changes in legislation and regulations, to deal in the short run with the financial services sector because that was topical.

Mr. Mackenzie: Yes, I remember that.

Mr. McFadden: Our decision was that once we finished with that, we could then expand it to look at other industries. My point is this: Given the existing evidence we have, I am not sure there is an awful lot that is relevant that we can do now, because the regulations have just freshly been changed or the legislation is even today before the House making a major change in legislation. I do not think the issue has gone away. I am just stating that I am not sure the material we got from last fall has much relevance and that we really have to start up again.

Mr. Ferraro: In the package handed out by Mr. Bond on terms of reference, about half way down terms of reference for our committee, page 3. It is about half way in the package; there is number 3 at the top.

Mr. Chairman: That is document 207/86-87, July 18, 1986, page 3.

Mr. Ferraro: I just point out to the committee that my statements were in conjunction with that, and I believe Mr. McFadden's were, that we "examine and inquire into corporate concentration in the financial services industry."

Mr. Ashe: That is all it was; "financial services." It says, "The standing committee on finance and economic affairs, (a) will examine and inquire into corporate concentration in the financial services industry, including considerations of:" and it goes on and on and on.

Mr. Chairman: That was a decision we made as a committee.

Mr. Morin-Strom: That was not what the Treasurer had originally asked this committee to look at. After the Treasurer came out with his budget in the spring, the committee met some time in the summer and determined it would concentrate primarily on the financial services sector first, and particularly for a time in the fall sittings of the committee, that was the concentration. But from the Treasurer's original request to us in his budget, it was never intended that corporate concentration would be the sole focus.

Mr. Ferraro: Why do we not get what the Treasurer wants clarified?

Mr. Chairman: I think Mr. Morin-Strom is correct. A year ago when the Treasurer made his presentation--this is David Bond's letter to us of October 29, 1986. He reminds us to consider the issue of corporate concentration, the takeover activity as it relates to Ontario. I think he was looking for ways and means in which we could advise him, that maybe he could find some more tax money.

Mr. Ferraro: You may be right.

Mr. Chairman: At that time. I do not know whether that is relevant now.

Mr. Ferraro: In my view, the whole buzzword out there was the takeover of Canada Permanent by Canada Trust. Basically that was the thing that precipitated the whole thing. Because it is a trust company, it is in our purview and I thought that was--

Mr. Mackenzie: Hence, Goodyear workers, for example, in the takeover battle they went through that failed and has cost them their jobs, or a number of other takeovers we have had in this--

Mr. Morin-Strom: I think it was concern about the Foreign Investment Review Agency, the standing of FIRA and the movements that were going on at the federal level. Mr. Nixon felt that provincially we should be attacking--

Mr. Ferraro: Let us reconfirm what the--

Mr. Morin-Strom: --realizing what the real risks are.

Mr. Ferraro: That begs the question and I need some enlightenment. Do we get direction from the House leaders or do we do it on the basis of what we think we should do?

Mr. Ashe: I think we could get back to the original recommendation from the Treasurer and then if we do anything, ask the Treasurer, "Is this still what you want?"

Mr. Chairman: Would you like the chairman to--

Mr. Ferraro: Yes, find out what the hell we--

Mr. Chairman: --informally ask the Treasurer whether he is still interested in something to be forthcoming?

Mr. Mackenzie: Yes, I think it would be useful.

Mr. Ferraro: I do, too.

Mr. Ashe: The first thing is to just dig out what he really did ask in last year's budget, then take it to him and ask, "Do you still want this?"

Mr. Chairman: If I may make an observation, I think philosophically the committee did not really come to a decision. We heard strong arguments on the American concept of defusing corporations. We also heard fairly hectic arguments that other countries such as Japan do very well by bolstering corporations. We never philosophically grappled with that. Is that a fair comment?

Mr. Mackenzie: It is a fair comment.

Mr. Chairman: There are some interesting ideas we might have wanted to grapple with, such as whether money spent on a corporate takeover should be tax deductible and whether we might recommend that in some way or another that kind of activity in a corporation should not be a corporate expense and whether you can even do that, in view of our tax-collecting agreement with the federal government if it did not want to do it.

Mr. Mackenzie: I want to get into the House because I am a critic in this debate that is coming up. Can I leave a suggestion with you that maybe we can deal with at the next meeting? That is that in laying out our schedule, we do what we can to leave as much of the months of July and August as free as we can. Most of us who are sitting here to the end of June are going to want some break. Most of us would also rather get into our constituencies. I think that if you are laying out a schedule, it should be September and the one or two weeks before we go back in, if indeed we ever go back in.

Mr. Ferraro: I agree. I do not think we should sit in July.

Mr. Chairman: I know the committee wants to adjourn within the next four minutes. Let us presume that we are putting the corporate concentration issue on the agenda again, that we are not finished with it and that I will talk to the Treasurer.

Do you want us to redeal with the budget, if we could, in the next few minutes?

Clerk of the Committee: The reason is that the Board of Internal Economy is meeting next week and then it will be a month before it meets again. I had my secretary check the figures on the trip to Washington. It came to $13,000. That was for two days sitting, staying at the hotel and the cost of the consultant. My calculation is that we could do it for five days at $22,000.

Mr. Mackenzie: If that is your quick calculation, that is what you add in.

Clerk of the Committee: Yes. Could you approve the budget with those calculations in?

Mr. Mackenzie: I would.

Mr. Chairman: That is the budget as it has been handed out, plus $22,000 for a trip. Is there any discussion? May I have a motion? Mr. Mackenzie?

Mr. Mackenzie: Yes.

Motion agreed to.

The committee adjourned at 10:57 a.m.

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

TRIP TO WASHINGTON

THURSDAY, JUNE 11, 1987

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

CHAIRMAN: Cooke, D. R. (Kitchener L)
VICE-CHAIRMAN: Ferraro, R. E. (Wellington South L)
Ashe, G. L. (Durham West PC)
Cordiano, J. (Downsview L)
Haggerty, R. (Erie L)
Mackenzie, R. W. (Hamilton East NDP)
McFadden, D. J. (Eglinton PC)
Morin-Strom, K. (Sault Ste. Marie NDP)
Ramsay, D. (Timiskaming L)
Stephenson, B. M. (York Mills PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:
Knight, D. S. (Halton-Burlington L) for Mr. Cordiano
Partington, P. (Brock PC) for Miss Stephenson

Clerk: Carrozza, F.

Staff:
McLellan, R., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Thursday, June 11, 1987

The committee met at 10:08 a.m. in committee room 1.

TRIP TO WASHINGTON
(continued)

Mr. Chairman: Let us get started. Mr. McLellan has just brought to my attention that in this morning's Globe and Mail we can get a free video on free trade from Ottawa as part of the $12-million campaign.

Mr. Ashe: I think all the New Democratic Party members will want--

Mr. Chairman: If we get Mr. Ashe's bill passed, we can get it on Sundays in our dirty video shop.

In any event, I have a couple of housekeeping matters. The committee asked me to discuss with the Treasurer (Mr. Nixon) the request he had made to us for a report on corporate concentration. He agreed that at this time there is no particular question he is asking to have answered. The view of most members of the committee I think is that since we had concentrated our hearings on financial matters, a lot of our questions had been resolved with Bill 116. So I report back to you that there is nothing in particular he is asking of you.

Mr. Ashe: I think it is important that it be on the record that we made consciously, rightly or wrongly, the decision to go the financial route. Therefore, it should be on the record that I do not think our time and efforts in that regard were wasted, because it obviously led right into and made the deliberations on Bill 116 that much less demanding and more fruitful in terms of the ultimate results. So although some would say, "You went through all that and did not even do anything," I think the record has to show that in fact it did serve a useful purpose, albeit in a roundabout way, because Bill 116 has now been dealt with.

Mr. Chairman: I agree, Mr. Ashe, and I may have had the wrong tone in my voice.

Mr. Ashe: No, I do not think you did, but it just was not on the record.

Mr. Chairman: Your chairman has certainly learned a great deal, and it has focused a lot of issues in my mind, as far as I am concerned.

Mr. Mackenzie: I am actually not overly surprised at the answer, but I do have some question about it. I may be incorrect in this, and you can correct me if I am, but it seems to me that the issue raised with some prominence and force by Mr. Peterson during the election campaign did not exclusively zero in on financial institutions. It was the more generic or broader issue of corporate concentration. I think we have areas like the oil industry today and a number of others that should be of concern.

I think if the evidence before this committee meant anything at all and

if anybody is concerned at some of the material from some of the writers or has read some of the books--obviously the one by Diane Francis--then I think there is a very major problem in this country in terms of corporate concentration. It obviously affects Ontario as much or more than any other province. I am a little bit--I am not sure what the hell the expression is--a little bit interested and, all of a sudden, this is no longer an issue.

What has happened to the great concern during an election campaign that the Premier (Mr. Peterson) showed in this issue? There is some very clear evidence before this committee that there are things at least to be discussed, if not really worried about, in terms of corporate concentration in this province. I am just wondering if there is now really a new agenda.

Mr. Chairman: The Treasurer did not say to me it was not an issue. After all, it was the Treasurer who raised it and asked us to look into it, and we chose to concentrate on financial areas. He simply said there are no particular questions he is asking us to address. After all, we have had the issue on our plate now for more than a year, have issued one report which did not say very much, and have gone back to him and said, "Do you really want us to say anything?" So I do not know that his answer should be taken as saying it is not an issue. Mr. McLellan has just handed me an article from this week's Maclean's which says it is an issue.

Mr. Mackenzie: I think it would be a fantastic issue.

Mr. Morin-Strom: I recall that when we decided to concentrate on the financial institutions portion, there was some disagreement among committee members as to where we should be going in terms of committee priorities. We decided we would concentrate first on that area and, hopefully, at a future date would get to other areas.

I know from my experience in northern Ontario one industry that is a focus of concern is the oil industry, in particular the refiners and the fact that, in terms of the distribution system, we have control at the pumps in the hands of a very few major players in Toronto. It would appear, according to the service station dealers in northern Ontario, that the prices are being manipulated--dictated, in fact--from Toronto. In discussions we have had within our party with the Independent Petroleum Marketers of Ontario, they have some seriousproblems with the kinds of contracts being imposed in the industry that are prohibited in the United States in terms of restrictions on competition and price at the retail level.

That is one area which I think deserves some focus of attention. I know it has been the focus of attention of a federal task force study which looked at it for a number of years but never did anything or really resolved anything. That is one example. Undoubtedly there are other industries which do deserve the attention of this committee at some point if we can find the time.

Mr. Chairman: That is correct. It has obviously been the subject of a lot of debate in recent months in the Legislature. I do not know that our committee looked at that issue in its hearings, because we did concentrate on financial institutions. We looked at it a little bit when we were dealing with Bill 26, I think.

In any event, that is really not a major focus of our agenda today, I am simply reporting back to you. Unless you have something very pertinent, Mr. Ferraro, perhaps we can get on to our report.

Mr. Ferraro: Let us get on with it.

Mr. Chairman: You have been given a draft that Mr. McLellan has prepared, which he refers to very politically as being observations as opposed to recommendations. I think that was the way we directed him, and it certainly saved us a lot of time. Obviously, you have put a lot of work into this, Mr. McLellan. I would like to congratulate you and indicate our appreciation.

You have a couple of housekeeping matters on trade, and then perhaps we can take a look at your report in detail.

Mr. McLellan: I think last week we had a few questions. One of the points brought up by Mr. McFadden was on our General Agreement on Tariffs and Trade contacts in the United States and, if the committee is down there in the fall, where we can get in touch with them.

First, there is a memo on your desks right now. The GATT does not have an office in Washington or New York. They describe it as a fairly loose organization. Obviously, it is an agreement between countries, but there are contacts through the Office of the United States Trade Representative in Washington and also the State Department, so when you are there, if you do want to meet with any of those fellows, we can probably set something up. That is the first housekeeping thing.

Second, there is a note on your desks about the trade talk schedules, which I guess we all probably know about anyway, but at least it outlines what is happening from June 22 at the first ministers' meeting through until next April 1988 with respect to the final signing, if in fact there is an agreement. That trade talk outline may be helpful.

Third, I think it was Mr. Foulds who asked about the status of HR3 and S490 and also Mr. Heinz's Senate steel bill, S441. In the memo to you, which you can read through, it says HR3 passed the House on April 30, 1987. With respect to the Senate bill, S490, it is currently at the committee stage. It is before finance, government affairs, agriculture and banking, so it is before several committees right now and it is currently the markup period, before proceeding to the floor action and Senate debate.

At the end of that period for Bill S490, it goes to conference action, and then they hope there will be final approval from each chamber during August. In the final step, which would be late August, the bill would be sent to the President for final approval and, of course, if it is vetoed, it goes back to Congress which, with a two-thirds vote, can override the President.

I think the summary on that is that those two bills we were concerned about in April are travelling fairly quickly and we can look for a final summation and passage by the end of the summer or certainly by early September. So it may fall in line perfectly with your plans to go down to Washington.

Finally, on Mr. Heinz's steel bill, I spoke with a David Kantor yesterday with respect to this bill. It seems that the focus is on steel quotas and unilateral action by the US within 90 days if agreement is not reached with respect to imports into the United States. The current status is that there is no action on it. It has been brought forward in the finance committee and is currently sitting there. It has been endorsed by Senators Heinz, Specter, Glenn and Rockefeller, and just last week Senator Levin came in.

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You do not have a memo on this final S441, by the way, but obviously it is concerned with the import penetration of steel into the US. There has been an increase in terms of exports into the US. Canada currently accounts for about 4.7 per cent going into the US. That is up from 1984 when it was 3.2. In 1986, it was 3.6. You can see our exports to the US have been creeping up.

They say the chances of this bill really going anywhere are quite remote and it would be used more as leverage for future legislation, which would be certainly beyond September or October. What they are saying is more of a statement. It is not really going to travel anywhere, but it is a notice to Canada of their concern in this area. Of course, the federal government in Canada has responded to this bill with respect to monitoring exports into the US, so it appears they have achieved what they wanted to achieve without passing the bill.

Mr. Ashe: I think there are three on S490, when they get together in the conference-action stage and, in effect, create one bill. That is what I understand.

Mr. McLellan: Yes.

Mr. Ashe: If it goes to the President and he vetoes it, and he has given every indication he will, and it goes back, what if only one of the two houses gives it the two thirds? Is there any recourse or action after that?

Mr. McLellan: On the second page of that memo, it says: "A compromise bill approved by both houses is sent to the President, who can sign it into law or veto it and return it to Congress. Congress may override veto by a two-thirds majority vote in both houses; bill then becomes law without President's signature."

They are talking about both houses. It has to be both houses.

Mr. Ashe: Does it die if it does not get the two thirds in both houses?

Mr. McLellan: That is my understanding.

Mr. Ashe: If it gets two thirds in one and does not get it in the other, that is the end of it.

Mr. McLellan: Yes. It is my understanding it has to be both houses.

Those are the bits and pieces we had asked about last week.

Mr. Chairman: In document 50/87-88, which is the larger statement of our trip, there is a new version out that includes a picture of Mr. Ferraro and myself. Sorry, go ahead.

Mr. McLellan: I do not want to take up too much time with this background stuff, but it may be worth while.

On HR3, it says: "The most contentious provisions in this bill cited by Canadian officials include a new definition of illegal subsidies, making almost any government support for an industry subject to countervailing duties; mandated retaliation against foreign countries' unfair trade

practices, which could escalate global trade tensions; anti-dumping rule changes to more readily ensnare countries whose products account for only a fraction of imports under investigation." That is the kind of thrust of HR3 that we have to be concerned about.

I have a lot of notes here, but I do not think we necessarily have to get into this background material now.

Mr. Chairman: Did you mention the GATT?

Mr. McLellan: Yes.

Mr. Chairman: There is no GATT office in New York. Incidentally, our budget was passed completely, so make plans to go to Washington in September. We will discuss that with a straight face.

Mr. Ashe: I think we should go this summer, just in case.

Mr. Chairman: Shall we look at this draft then? This is document 106/87-88. It is easiest if Mr. McLellan goes through it. If I do not hear anything, I will presume that what he is reading is passed. Is that fair?

Mr. Ashe: May I just start out with an opening comment? It does not go in any particular place. I read it.

Mr. Chairman: Yes.

Mr. Ashe: There are two areas, one very specific. That is point 3 at the top of page 5, HR3 and S490, Japan and other southeast Asian countries. I think it is a little broader than that, frankly. I think it includes part of the European Community. But more importantly, one or two countries in South America--it escapes me which ones--were identified more so even than southeastern Asian countries. Japan sure was.

Clerk of the Committee: Brazil.

Mr. Ashe: Was it Brazil? Yes. So I think Brazil at least should be highlighted.

The other one is more of a general nature and I do not know where it should go. I would have to think--at least I always had the impression, and I think we did it down there--that we conveyed not only when we were talking about trade vis-à-vis Canada and the United States, but also continually pointed out how important Ontario is to the United States. I appreciate that is part of the Canada context. But I am not quite sure it is highlighted enough, how much we impressed and amazed some of them that Ontario in itself was such a significant, and in effect the second largest, trading partner. I thought that was missing.

I have a couple of others, but they are more specific. That one is much more general.

Mr. Chairman: Perhaps we can keep that in mind as we are going through it and make appropriate amendments to emphasize Ontario.

Mr. Ashe: I think the context is in the educational sense.

Mr. Chairman: Yes.

Mr. Ashe: We cannot take it out of the Canadian picture, but I think we did make a few marks and educated a few people in that regard.

Mr. Chairman: Senator Heinz.

Mr. Ashe: A few others too, but he was one.

The unfortunate thing, Mr. Chairman, is that I have to leave at quarter to 11, so I wanted to get that in in case I did not get to it.

Mr. Chairman: All right, let us get going then.

Mr. McLellan: Last week, we had agreed to have observations and to emphasize it was not necessarily a consensus report. I will start off with the introduction.

The standing committee on finance and economic affairs held meetings in Washington, DC on April 6 and 7, 1987, for the purpose of exchanging ideas on the current Canada-US bilateral trade negotiations. The committee met with Canadian embassy officials, members of Congress and government officials (Appendix: Trade Delegation Agenda).

Members of the Ontario delegation were successful in putting forward their particular interests and concerns in discussions which addressed both national and regional trade issues of mutual interest to Canada and the United States. This report summarizes the main observations in the meetings and highlights significant considerations of importance to the protection and promotion of Ontario's interests in the trade negotiations. The observations made in this report by the Washington delegation are not based on a consensus of the committee as a whole.

In addition to the formal meetings, the committee had a luncheon with congressional staff members and hosted a breakfast for the members of the Northeast/Midwest Congressional Coalition, followed by a press briefing and committee press statement. A second luncheon at the law offices of Van Ness, Feldman, Sutcliffe and Curtis offered insight into the current procedures in American politics and the importance of coalitions and lobbying in their governmental system.

A comprehensive background report, document 050/87-88, was prepared for the committee to be used in the preparation of this report.

Mr. Chairman: Is everything all right there? Any concerns about any of that? Okay.

Mr. McLellan: Canadian objectives: The Canadian government's interest in trade negotiations is largely to promote international trade with the United States, stimulate economic development and generate employment. The government has been concerned for some time with growing American protectionism and the need to enhance Canada's competitiveness in the international marketplace. The trade negotiations are based on the following objectives as outlined in December 1985 by the Department of External Affairs in Canadian Trade Negotiations.

To secure market access through: New rules and procedures limiting the protectionist effect of trade remedy laws, i.e., exemption from measures aimed at others and a rigorous limitation on the degree and duration of measures which affect Canada; and clearer definition of countervailable financial

assistance programs, i.e., subsidies, to industry, agriculture and fisheries so as to reduce the threat of countervailing duties.

To enhance market access through: More open entry to the United States federal and state government procurement markets; and broad trade liberalization, in an orderly manner, through the elimination of tariffs and quotas to be achieved over a reasonable period of time with adequate adjustment transition provisions. Current barriers inhibit full Canadian industry participation in the North American market and in this way prevent Canadian companies from achieving the efficient large-scale production that could enable them to compete more effectively in US markets and other markets around the world.

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Mr. Chairman: If I can just stop you there, I am mildly surprised that it was that well delineated in December 1985, but it was, was it?

Mr. McLellan: Yes. Finally, to enshrine market access through: A strong dispute settlement mechanism to reduce the disparities in size and power and to provide fair, expeditious and conclusive solutions to differences of view and practice; institutional and other provisions that maintain Canadian independence of action in areas of national endeavour; and a treaty or congressional-executive agreement to enshrine our mutual obligations and accommodate differences in the two governmental systems.

Major issues: At the time of the Washington trip, the Trade Negotiations Office agenda indicated the possibility of an agreement on "general principles" by early summer 1987. In April 1987 progress had been made on preliminary topics such as custom procedures and tariff reduction. Over the past two months the discussions have moved into the specifics of more complex issues which were raised in the discussions in Washington.

These issues are being pursued with greater intensity now through the Trade Negotiations Office in specialized committees. These include the following:

A clarification of subsidies for the purpose of avoiding countervailing duties.

A dispute settlement mechanism to resolve trade disagreements.

Agreement on foreign investment to clarify Canadian investment in the US and the rights of US firms in Canada.

A general code for services trade, particularly for the financial sector, e.g., reciprocal banking privileges.

Agreement on intellectual property, patents and copyright laws and exemptions for the Canadian cultural sector.

The need to reconcile the role of supportive marketing boards in the agricultural sector against existing tariffs.

Tariff reduction on several commodities in a five- to 10-year phase-in program; and

Agreement on the simplification of custom procedures for the transborder movement of goods and services.

Observations: During the visit numerous topics were discussed on Canada-United States relations. This section summarizes observations within four general areas as follows: US-Canada relations, US trade concerns, trade legislation, Ontario-Canada considerations.

Mr. Chairman: Do you want to stop there? Should we be talking about Ontario-US?

Mr. Ferraro: That is just what I said. I think we should, in my view. With great respect for our national patriotism--I believe we are all great Canadians--we are an Ontario standing committee and we should have some perspective in that regard.

Mr. Chairman: How can we--

Mr. Ashe: I think in some of the verbiage--I think the report generally is well done and I subscribe to it pretty well right across the board, but I think we do have to highlight a little bit more the Ontario aspects and the Ontario educational part that we did vis-à-vis the volume of trade between Ontario and the US.

Mr. Chairman: How can we put that into these observations at this stage?

Mr. Ashe: I do not think it is anything disputable, surely. It is just a statement of fact.

Mr. Morin-Strom: I think we should still say Canada-US relations, because we are discussing Canada-US relations, focusing on Ontario.

Mr. Chairman: Does that sound all right?

Mr. McLellan: Sure.

Mr. Ferraro: I am sorry, I did not hear that exactly.

Mr. Morin-Strom: With particular focus on Ontario concerns.

Mr. Chairman: US-Canada relations, with a focus--

Mr. Morin-Strom: With particular focus on Ontario concerns.

Mr. Ferraro: So you are agreeing it should have some reference to the Ontario-US mixture?

Mr. Morin-Strom: I am saying we should still say "Canada-US," but we should say "with particular focus on Ontario."

Mr. Ferraro: What does that mean exactly?

Mr. Morin-Strom: With Ontario trade.

Mr. Ferraro: Just for elaboration, Karl, are you saying we should have some statistics as to the trading relationship and so forth?

Mr. Morin-Strom: I just thought you wanted to comment on that.

Mr. Ferraro: I am just trying to solve a problem.

Mr. Morin-Strom: You were asking whether to change "Canada-US" to "Ontario-US." I think we should leave it as "Canada-US," but say we have particular focus on Ontario concerns or Ontario trading.

Mr. Ashe: I have no problem with the heading. I do not care what it says. I think we have to convey to our colleagues, presumably if this ends up in something that we table--I presume even many members of the Legislature will be educated to find out what a significant trading partner Ontario is to the US. I may have an ulterior motive for putting it in black and white.

Mr. Morin-Strom: You are a little further down into the act.

Mr. Ashe: Yes. I do not care about the heading.

Mr. Morin-Strom: I thought we were just talking about that first paragraph under "Observations."

Mr. Chairman: Our speaking to Canadians may come in the fourth observation, "Ontario-Canada considerations."

Mr. Mackenzie: Not having been down there, I do not intend to kick in here unless there is something that I just do not understand, Mr. Chairman. But just before you leave it, on page 3, "The need to reconcile the role of supportive marketing boards in the agricultural sector against existing tariffs," leaves me just a little bit confused. I am wondering if there is a quick explanation of that.

We are not accepting or agreeing that we are going to be buying the argument that marketing boards are something we may have to take a look at vis-à-vis tariffs, are we?

Mr. Chairman: We are certainly being told by the Trade Negotiations Office that marketing boards are not on the bargaining table. Maybe that--

Mr. Mackenzie: Are these issues that we received as major issues from the Americans?

Mr. Chairman: Well, it says "from the Trade Negotiations Office." That would be the Canadian office.

Mr. Mackenzie: Okay.

Mr. Chairman: But I am not sure whether that is very clear either.

Mr. Mackenzie: It just leaves in my mind, depending on the context that it is in there--are we saying or have we said that part of the negotiations are our marketing boards, you know, vis-à-vis tariffs? Certainly I hope that is not what we have done.

Mr. McLellan: May I just ask something?

Mr. Chairman: Yes.

Mr. McLellan: With respect to the agricultural--I will just throw out a few comments here. Reisman has said that, as far as he is concerned, agriculture is the most difficult issue on the table. He says the causes of the problems are international with respect to overproduction and low prices, because of US-European subsidy wars. It is my understanding that the

agricultural issues are securely on the table with the US, but Canadian farm subsidy programs will not be significantly changed. That is the kind of stuff coming out of Ottawa recently.

There is another note here that I had made. These are quotes. On agriculture: "In terms of the current agricultural situation, 'Canada is not pure itself, but it is right to challenge the policies of the EC and, most recently, the US.' Smart labels agriculture 'the most botched-up sector of the whole world trading system.'" So they go on and on. "He had just returned from the quadrilateral meeting of trade ministers in Tokyo," and they go on to discuss it.

I do not know how we can clarify that necessarily. Agriculture is certainly on the table, but the extent to which they are protecting subsidy programs is not entirely clear.

Mr. Mackenzie: Are we saying, for example, that a marketing board therefore is automatically a subsidy program or something? I understand the connection, but it raises a couple of fundamental questions, it seems to me.

Mr. Chairman: It says these issues, including the following, are being pursued by the Trade Negotiations Office in specialized committee. This is in dealing with the US trade relations.

Mr. McLellan: That is right.

Mr. Chairman: The issues that the TNO is pursuing are presumably the need to retain supportive marketing boards in the agriculture sector. Is that not what they are telling us? Shall we say that? Does that sound fair?

Mr. Mackenzie: Is it something like our sovereignty or our culture, or any number of other issues? If the marketing boards are among the things that we are, in effect, trading with, then we sure as hell are at risk in terms of part of the Canadian sovereignty.

Mr. Chairman: I am not sure what "against existing tariffs" means. So the need to retain the role of supportive marketing boards in the agricultural sector--okay? Does that settle page 3?

All right, on page 4. Mr. Morin-Strom suggested that the first observation be retitled "US-Canada relations with particular focus on Ontario concerns."

Mr. Morin-Strom: I was not actually referring to a title when I was saying that. I was saying, in that first paragraph, which is all that I think we ever got through reading--

Mr. Chairman: Yes?

Mr. Morin-Strom: "During the visit numerous topics were discussed on Canada-United States relations." I am just saying that--

Mr. Chairman: Oh, you want to stick it in there?

Mr. Morin-Strom: That first sentence.

Mr. Chairman: All right.

Mr. McLellan: "With particular focus on Ontario concerns."

Mr. Chairman: That sounds fine. I am getting a nod from Mr. Ashe. All right, so the first set of observations starts: "US-Canada Relations."

Mr. McLellan: Okay. US-Canada Relations: To varying degrees the committee discovered a lack of awareness of the importance of the Canadian-United States trading partnership. The Canadian ambassador to the United States has discussed the American misperceptions of Canada in recent months, which include--this was taken from a speech:

"Canada is a second-rate American trading partner; Canada has an enormous trade surplus with the United States; the Canadian dollar has been kept artificially low to stimulate exports; Canadian exports are subsidized by such public spending as medicare; the United States doesn't subsidize American industry; and only Canada would benefit from a Canada-US trade agreement."

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The committee made the following observations on United States-Canada relations:

1. A general lack of knowledge of Canada-United States trading relations has not contributed to a full appreciation of the importance of this economic relationship.

Mr. Morin-Strom: Are we going to go through these one at a time?

Mr. Chairman: Perhaps it means we should stop at each one and ponder it.

Mr. Morin-Strom: I do not like the way that thing is written. Perhaps it is the grammar. We should say what it has done, not what it has not done.

Mr. Chairman: Are you talking about the observation to be printed?

Mr. Morin-Strom: Yes, "lack of knowledge...has not contributed to a full appreciation" is kind of a twisted way of saying something. I think we should say it has contributed to a lack of appreciation or something or some misunderstandings about the importance of this economic relationship.

Mr. Chairman: I think I am seeing agreement on that.

Mr. Morin-Strom: "A general lack of knowledge of Canada-United States trading relations has contributed to an inadequate"--

Mr. McLellan: Or "inaccurate."

Mr. Morin-Strom: "Inaccurate appreciation in the United States of the importance of this economic relationship."

Mr. McLellan: What about this comment? "A general lack of knowledge of Canada-United States trading relations has contributed to an inaccurate understanding of the importance of this economic relationship."

Mr. Morin-Strom: "An inaccurate understanding," that would be fine.

Mr. Chairman: Is it an inaccurate understanding in the United States or just inaccurate understanding?

Mr. McLellan: Of the importance of this economic relationship.

Mr. Morin-Strom: You could say, "an inaccurate understanding in the United States of the importance of this economic relationship." The problem is the lack of understanding in the United States.

Mr. Chairman: All right. I have it now: "A general lack of knowledge of Canada-United States trading relations has contributed to an inaccurate understanding in the United States of the importance of this economic relationship." Shall we take a vote on that? All in favour? Everyone is in favour.

Mr. McLellan: 2. The strong feelings of "goodwill" towards Canada are still evident, but this reservoir of positive relations cannot be depended upon indefinitely.

Mr. Morin-Strom: I do not like that one, because it gives the sense that we have been getting some benefits from this goodwill and we are under threat of losing it.

I sense that the goodwill is there and will continue for an awfully long time. I do not sense that a major change in that is going to happen. On the other hand, I do not have the sense, which this sentence is giving, that we have been benefiting recently from this goodwill and that something is going to change.

To me, we have been hurt. We have goodwill, but we are still having lots of problems and we have been losing on lots of different issues. Certainly, this red flag is one that is being used by the federal government and certain lobbies to say, "The time is running out and the door is going to shut," or something. I am not so convinced things have been that great and there is going to be a major change and suddenly there is a disastrous scenario coming. I am not convinced this is giving the proper sense, either in terms of what has been happening beneficially from the goodwill or that it is going to end.

Mr. McLellan: What if we said, "The strong feelings of goodwill towards Canada are still evident and this reservoir of positive feelings must be promoted, given current trade irritants."

Mr. Morin-Strom: I have no problem with that--

Mr. McLellan: I think the Canadian embassy had said to us that first morning, and I think throughout the meetings everyone said, we have relatives on either side of the border and historically we have been good trading partners and goodwill does exist, but we are experiencing current trade problems that have to be resolved to continue within this.

Mr. Chairman: That does not take a stand on whether it is going to continue for everyone.

Mr. McLellan: I think we are being more aggressive and less passive in saying this, though, as a change. Do you agree with it?

Mr. Morin-Strom: Yes. Let us hear it again?

Mr. McLellan: "The strong feelings of goodwill towards Canada are still evident"--

Mr. Morin-Strom: Period, right?

Mr. McLellan: You want a period?

Mr. Morin-Strom: Are you going to put a period?

Mr. McLellan: I was going to put a comma.

--"but this reservoir of positive feelings must be promoted, given current trade irritants." I think building on that goodwill--in other words, we must promote ourselves, given current trade irritants in the corn area, discussions on the auto pact, and so on. We have a series of problem areas that have to be resolved.

Mr. Morin-Strom: --"but this reservoir of positive feelings must be promoted"--

Mr. McLellan: --"given current trade irritants."

Mr. Ferraro: On a point of order, Mr. Chairman: with respect, I have asked for some input from committee members and from you. We have three members here, and I can only assume that other members have good reasons for not being here. Does it make sense to proceed, or to hold off this report until next week?

Mr. Morin-Strom: I think we should have a Tory.

Mr. Chairman: Yes. I think it is dangerous to continue without a Conservative member present.

Mr. Ferraro: I say with respect, I would just as soon go into the House and listen to private members' hour. It might be good that we could have a further chance to look at this report on our own and deal with it next week.

Mr. Chairman: Just in comment, without entering the debate, I might inform the committee that when last week's meeting was cancelled at the request of the Liberals, Mr. McFadden's office asked me if there was a substitute time for it. I then canvassed members about possibly meeting this afternoon. The Conservatives indicated they could not meet this afternoon.

It turns out the day has just been saved. We were given by the House leaders, because we did request substitute time, a freebie in time if we can find time to meet. They did say any time this week that we could agree on meeting. Unfortunately, we could not find time this week but, hopefully, we could go back to them if we needed to and seek that time before the session rises.

Mr. Ferraro: What do we have--

Mr. Chairman: I am concerned that we do not have that many weeks left.

Mr. Morin-Strom: I do not think we have that much to do, that I can tell.

Mr. Ferraro: What else do we have on the agenda?

Mr. Chairman: If we do not deal with corporate concentration and if

we do not wish to react to the tax reform proposals which are coming down next week from the federal government, we will not have anything on our agenda. The second is a big "if."

Mr. Ferraro: I look for direction from the committee and from you, Mr. Chairman. Is it not then a strong consideration that we look towards next week's meeting to deal with this report, or does the committee want to proceed at this juncture?

Mr. Chairman: I am in the committee's hands, but I see a Conservative here now. The issue has arisen that for a few minutes there was no Conservative in the room. We have not had any discussion of the report while there was no Conservative here. There is now a Conservative in the room, but if you wish to--

Mr. Ferraro: Maybe it is an idiosyncrasy with me, but I think when you are writing a report you like to get as many members as possible.

Mr. Chairman: Yes? No?

Mr. Ferraro: If there is nothing on the agenda, it would appear to me to make logical sense to try to hustle everybody out for the next meeting.

Mr. Chairman: Do you want to put a motion on the floor? Feel free to--

Mr. Ferraro: I do not think I need a motion. Consensus is fine.

Mr. Partington: It sounds reasonable to me.

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Mr. Ferraro: If people want to stay, I am comfortable with that too. Maybe it is just an idiosyncrasy with me that I would like to see a lot better attendance when we are writing a report.

Mr. Morin-Strom: It would be nice for our two Conservatives to be here. We would probably feel more comfortable.

Mr. Chairman: I am in the committee's hands. I think the issue has been raised, not a motion, but the issue of Mr. Ferraro as to whether or not we adjourn this meeting until next week.

Mr. Partington: I will support Mr. Ferraro's thoughts. I think they are valid.

Mr. Chairman: I do not think I even heard his argument. Did you?

Mr. Knight: I did not hear his argument. I heard his statement.

Mr. Mackenzie: I think this coalition is dangerous.

Mr. Chairman: I remind the committee we have two weeks left. Next week we will have heard from Mr. Wilson on tax reform proposals that might be wanting to take some attention.

Mr. Ferraro: We will hear on the 18th.

Mr. Chairman: You are right. The afternoon of--

Mr. Ferraro: The 18th.

Mr. Chairman: Next Thursday.

Mr. Morin-Strom: Next week is really the last week, because the report will not be issued to the Legislature if it is not done next week.

Mr. Chairman: That is right.

Mr. Morin-Strom: It is not going to happen the last day we are sitting.

Mr. Ferraro: We are going to have enough on our plate anyway.

Mr. Morin-Strom: In fact, knowing how we usually operate, when we get to the last week, we rush everything to make sure we get out on Wednesday instead of Thursday.

Mr. Chairman: Any other discussion? I have heard two views that we adjourn, and I think one view that we not.

Mr. Ferraro: I am inclined to say we should wait until next Thursday, again only from the standpoint that I thought the last trip we had to Washington was the best one, certainly of the ones I attended. A lot of members who unavoidably cannot be here today will, I suspect, have integral comments to make on the report. Again, I think it is important that we get as many of those members out as possible in order to write the report.

An agenda for the next two weeks is essentially nonexistent. It would make more sense to me, Mr. Chairman, if the clerk or yourself and myself, as vice-chairman, tried to solicit as much attendance as possible next week, knowing full well that we have time to peruse the submission to a greater degree.

Mr. Chairman: In so far as those in the Liberal Party who attended in Washington are concerned, I think Mr. Epp has a permanent conflict with attendance at the standing committee on public accounts. To get him here, we would have to find another time. Mr. Haggerty is just not available today but could be here, I presume, next week.

Mr. Ferraro: Mr. Haggerty is available and Mr. Epp could conceivably get a substitute for his place on public accounts next week. Maybe even Jim Foulds would like to attend, with respect, because he did make a significant contribution in Washington, as did all members, in my view.

Mr. Chairman: Any other discussion?

Mr. Knight: You almost have to adjourn today so you can have a meeting next Thursday. There is nothing else to discuss next Thursday if you finish this off today.

Mr. Chairman: These are heavy issues that Mr. Ferraro has raised and I am going to adjourn for five minutes to contemplate them. In the meantime, we will have a brief social occasion.

The committee recessed at 10:55 p.m.

11 a.m.

Mr. Chairman: Getting back to observation 2, I have now written, "The strong feelings of goodwill towards Canada are still evident, but this reservoir of positive feelings must be promoted, given current trade irritants." That is on page 4 at the bottom.

Mr. Morin-Strom: Why do we not put it in two sentences? Just put a period and take the "but" out?

Mr. Chairman: It might make it stronger, would it not?

Mr. Morin-Strom: There are two points there, and I do not think the "but" is needed.

Mr. Chairman: It reads: "The strong feelings of goodwill towards Canada are still evident. This reservoir of positive feelings must be promoted, given current trade irritants." Is that all right? Is everyone happy?

Agreed to.

Mr. Chairman: Number 3. Go ahead.

Mr. McLellan: A possibility exists for "special trade status" for Canada despite the strong protectionist legislation (HR3 and S490). Canada is not a primary concern in the current trade problem, unlike Japan and the southeast Asian countries. I think Mr. Ashe wanted to add Brazil and the European Community.

Mr. Ferraro: I do not think it is just Brazil either. Argentina is a concern, is it not?

Mr. McLellan: Shall we say South America and European countries?

Mr. Ferraro: Yes.

Mr. Chairman: Is Japan not a southeast Asian country?

Mr. McLellan: I usually think of southeast Asia as Korea and Malaysia.

Mr. Ferraro: Technically the chairman is right, but I think it makes sense to highly emphasize Japan.

Clerk of the Committee: There was also the mention of Mexico.

Mr. Chairman: How do you include Mexico then? South America--

Mr. Morin-Strom: Why do we not leave it the way it is and then say, "There is also increasing concern about some of the Latin American countries and the European Community."

Mr. Chairman: You are saying just leave the sentence the way it is printed and then start adding a new sentence.

Mr. Morin-Strom: Yes. I think still the first focus is Japan and southeast Asia, but we should say there is also increasing concern about some of the Latin American countries and the European Community.

Mr. Chairman: It would read: "A possibility exists for special trade status for Canada despite strong protectionist legislation (HR3 and S490). Canada is not a primary concern in the current trade problem, unlike Japan and the southeast Asian countries. There is also increasing concern about some of the Latin American countries and the EC."

Mr. McLellan: That is a new sentence, is it?

Mr. Chairman: At least I have it as a new sentence. Now that I have it written, I am not sure I like it.

Mr. Morin-Strom: I said "There is also increasing"--

Mr. Chairman: Yes. It is just that we are kind of running on to a new subject in a way as opposed to special trade status.

Mr. McLellan: What we could do is just generalize and say that Canada is not a primary concern in the current problems the United States is having with its trading partners.

Mr. Ferraro: I think we should qualify that. It is not a primary concern for the most part. When you listen to people like Heinz and Senator Levin, I am not sure it is not a primary concern in their minds.

Mr. Morin-Strom: Depending on the industry, in other words.

Mr. Ferraro: Yes, and depending on the senator or the congressman. I think it is too general to state that Canada is not a primary concern in the current trade problem. I think for some legislators in the United States it is.

Mr. Morin-Strom: I am referring to the overall trade problems.

Mr. Ferraro: Yes. I agree with that.

Mr. Morin-Strom: But there are current trade problems with Canada.

Mr. Chairman: Canada is a concern, which is basically the opposite to what this is saying.

Mr. Morin-Strom: Instead of using the word "current," why do we not say "in the overall trade problem."

Mr. Ferraro: Or we could say "for the most part."

Mr. Morin-Strom: Either way.

Mr. Chairman: Canada is not a concern?

Mr. Morin-Strom: Maybe it is not the biggest concern, but it is a concern.

Mr. Chairman: I think we could say that about just about everyone. It is not the biggest concern.

Mr. Morin-Strom: In the overall trade problem.

Mr. McLellan: You are saying finish it there, Karl?

Mr. Morin-Strom: I do not know. You could, I guess.

Mr. Chairman: Not delineating it. "A possibility exists for special trade status for Canada despite the strong protectionist legislation. Canada is not the biggest concern in the overall trade problem." Does that make sense?

Mr. Partington: Why is it primary to use the word "biggest"? I do not want to confuse words, but "primary" means major. You are not looking for--

Mr. Morin-Strom: But it says "a primary," which gives the connotation that there is a bunch of them. Depending on how big your list is going to be, it might be. I do not know.

Mr. Chairman: I think we should leave out all the references to the rest of the world. By the time we add it all in there, we have the rest of the world in there, except for the Third World.

Mr. Ferraro: I agree.

Mr. Chairman: Maybe "biggest" is a little closer to what we are saying.

Mr. Ferraro: I would say "major."

Mr. Chairman: Does that sound good? All right. It simply says, "Canada is not the major concern in the overall trade problem." Let them read in Japan, etc.

Mr. McLellan: The reason I said that was that this HR3, which just passed as reported by the Gephardt version, is aimed narrowly at a few countries, notably Japan, South Korea and Taiwan, whose exports to the United States exceed imports by 75 per cent, and it excludes Canada. Other countries, notably Brazil and West Germany, fall into category 2, but they probably would not be attached perhaps because they are establishing an ongoing pattern. But they do not include Canada in what they see as being the major trading problem areas.

Mr. Chairman: The Gephardt amendment was the one that basically forces the administration to take action against countries that have what they consider a major trade surplus with the United States. That speaks to whether or not their figures are right and everything else.

Mr. Morin-Strom: Going back to the first sentence, "A possibility exists for 'special trade status'." I do not know what "special trade status" means--I suppose that is why it is in quotes--but there seems to be some serious dispute, depending on whom we talk to, as to whether Canada had any chance of getting special exemptions from those two bills we are talking about.

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Mr. Chairman: I did not hear anyone say that we could, and I asked a lot of people.

Mr. Morin-Strom: Yes, but this is suggesting that we could. This is saying a possibility exists. I am not sure that possibility does exist.

Mr. Chairman: There is always the suggestion we could work it into a free trade agreement, though.

Mr. Morin-Strom: That is what I am saying. There is some dispute as

to whether, even within a free trade agreement, we could get a special exemption. In fact, I would say the overall consensus was that we could not get a special exemption from the United States trade remedy laws. I think there is some dispute.

Mr. Ferraro: I think it is such a nebulous statement when you say there is a possibility, anyway. Does it matter a hell of a lot? I understand what you are saying, and you are right.

Mr. Morin-Strom: Yes.

Mr. Chairman: I have a feeling it is possible in a free trade agreement.

Mr. Morin-Strom: I thought it was possible when I talked to some people, but other people would say it was not, so it may not be possible.

Mr. Chairman: But it may be possible.

Mr. Morin-Strom: It is a matter of speculation.

Mr. Ferraro: How come, in the first paragraph, you want it positive and, in this one, you want it negative?

Mr. Morin-Strom: I do not know whether we should hold out the hope that we will get special status when a number of people said: "Absolutely not. There is no way you will get it." Would we be more accurate in saying, "There is some dispute within Congress as to whether Canada could get special status"? Or "should get"? Some feel it is possible and some feel it is not possible.

Mr. Ferraro: That is right.

Mr. Chairman: I am reminded that after we spoke to the Northeast-Midwest Congressional Coalition, a radio reporter came up to me and said, "Are you saying we cannot have a free trade agreement with Canada unless we give special exemptions to HR3?" Of course, I felt as if I was suddenly Simon Reisman. I said, "Well, not quite."

It is a poker game. I think the door was left ajar. They presume we have a time frame.

Mr. Morin-Strom: Why do we not say the possibility "may" exist?

Mr. Chairman: May? Does that satisfy everyone? All right.

Mr. Morin-Strom: You could say it "might."

Mr. Chairman: "The possibility may exist for special trade status for Canada, despite the strong protectionist legislation. Canada is not the major concern in the overall trade problem." Does it sound all right now?

Mr. McLellan: Because we refer to HR3 here, I was going to say that in the current outline for HR3, it does say, under "Trade Negotiations--Canada and Mexico," that HR3 authorizes "continued negotiations for a free trade pact with Canada and the beginning of such talks with Mexico."

Interjection.

Mr. McLellan: That is not background. This is an overview handed out in--

Mr. Chairman: That was part of HR3?

Mr. McLellan: Yes. That says the bill was passed.

Mr. Chairman: That is interesting. They knew we existed.

Mr. McLellan: That is May 2, the summary.

Mr. Chairman: I do not think that was in any of the material we saw on HR3 when we were down there in April. I am just wondering whether it got put in later.

Mr. McLellan: It could have been.

Mr. Ferraro: What is that?

Mr. Chairman: A comment, I guess, that authority was given to continue negotiations for a free trade pact with Canada and to begin talks with Mexico.

Mr. McLellan: That is in here.

Mr. Chairman: It is almost extending the fast track. It did not mention times.

Mr. McLellan: That is not subject outlined in the memo "Status of HR3." Actually, in the back of that it is quite helpful, because it gives an overview of all the particular aspects of HR3 and it goes into the Gephardt amendment, which is a pretty tight amendment.

Mr. Chairman: I am just interested in whether that was added after we went down and whether we had anything to do with it. Probably not.

Mr. McLellan: Shall we go on?

Mr. Chairman: I think we have settled observation 3. Right?

Mr. McLellan: US trade concerns: A recent report by the Federal Trade Commission (FTC) states that current protectionist policies in the United States could make US products less competitive in the world marketplace by raising the cost of imported products that are in turn exported in different forms. The FTC has attributed the rising trade shortfall (US$166.3 billion in 1986) to shifting currency exchange rates and growing US consumer demand. The perceived problems in American trade, as demonstrated in the current trade legislation, focus on the protection of jobs and industries, and the reduction of the deficit.

The committee made the following observations on United States trade concerns:

4. The American trade imbalance is a major preoccupation in Congress and is seen in part to be the fault of unfair foreign trade practices. The trade problem is largely seen to be a problem of their trading partners and not internal economic problems, such as a lack of competitiveness and high production costs.

5. Despite several trade irritants, very positive trading relations continue to exist between Canada and the US. These problem areas include the following: steel export abuses into the US; softwood lumber tariff; corn countervail duty; auto pact abuses (duty remission); injurious countervail subsidies and dumping activities; dispute settlement inconveniences; and regional subsidy programs, etc."

I just put "etc." there because I think we could add quite a few more but I thought that would give a flavour of the--

Mr. Chairman: Any discussion of that observation?

Mr. Partington: Reviewing sentence 5, you say "very positive trading relations continue to exist"; then you say "these problem areas." I suspect that refers back to trade irritants. It seems to me it would be better to say, "These areas of trade irritants include the following:" I would rather have that because I think it makes sense.

Mr. Chairman: Is it all right to change that?

Mr. Morin-Strom: Yes, that is fine. I would like to comment on some of the irritants. I do not like the use of the word "abuses" relating to either steel or auto. That gives the connotation that there is some kind of abuse going on in terms of the Canadian exports into the US. I think we should say the areas include "steel export levels." The main problem they are concerned about is the level or percentage of the market. I do not think there is any abuse going on. I would change "abuses" to "levels" there.

When it comes to "auto pact abuses," again, I do not think there are any abuses going on there. This "duty remission"--maybe we should say "auto pact concerns."

Mr. Chairman: Yes, that would have been a big flaw, to have left that word in, especially with steel exports, or in either case. "Steel export levels into the US."

Mr. Ferraro: If you are going to bracket "duty remission" for "auto pact concerns," should you not then, for example, for "steel export levels" have in brackets "trans-shipments"? If you are going to do it for one, you should do it for the other, or leave them both out.

Mr. Chairman: In other words, you would say "steel export levels into the US (trans-shipments)."

Mr. Ferraro: Yes.

Mr. Morin-Strom: Okay, we can put "steel export levels"--

Mr. Ferraro: You are putting an example, so "i.e."--

Mr. Morin-Strom: --"(i.e., trans-shipments)."

Mr. Ferraro: Then you should put "(i.e, duty remission)" to be consistent.

Mr. Morin-Strom: Yes.

Mr. Chairman: Then "auto pact concerns (i.e., duty remission)." So

it would be: "These areas of irritants include the following: steel export levels into the US (i.e., trans-shipments)" and "auto pact concerns (i.e., duty remission)."

Mr. McLellan: There is a second thought on this. The more we discuss either our guilt or lack of guilt--

Mr. Chairman: We do not have any guilt.

Mr. McLellan: It may be easier if we just want to list the irritants. We could just mention, for example, steel exports, softwood lumber, auto pact, rather than getting into talking about "steel export levels" or "auto pact concerns." In other words, we discussed the auto pact, we discussed steel, we discussed softwood, we discussed regional subsidies--

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Mr. Morin-Strom: Yes, that might be safer.

Mr. McLellan: --just be very general there.

In that vein, starting off with steel, we could just say steel exports, period. We could say softwood lumber exports, corn, or just agricultural exports, auto pact, subsidy programs, rather than getting into the specifics of what one side or the other side feels is good or bad.

Mr. Chairman: If that is what the committee wants. I personally do not see the harm in--

Mr. Morin-Strom: I think we could still leave "softwood lumber tariff" and "corn countervailing duty" is fine.

Mr. Chairman: I would prefer that, because otherwise you are using the American--

Mr. Morin-Strom: We use "auto pact." It is not the auto industry; it is the auto pact. That is the point. In terms of steel, it is the steel exports or the level of steel exports. I think it is just one or two words in each industry.

Clerk of the Committee: What do you want to do?

Mr. Chairman: The question I am being asked is, what have we decided? Do you want to shorten these, as Mr. McLellan has suggested?

Mr. Mackenzie: "Steel exports; softwood lumber tariff; corn countervail duty; auto pact concerns."

Mr. Chairman: Or just "auto pact"?

Mr. Mackenzie: "Auto pact" then. That is how it is known in the public mind.

Mr. Chairman: "Injurious countervail, subsidies and dumping activities; dispute settlement inconveniences; and regional subsidy programs."

Mr. Mackenzie: I think that is more sensible.

Mr. Morin-Strom: Under the countervail, we can even take the word "injurious" out and have "countervail, subsidies and dumping activities."

Mr. Chairman: Are we happy? Any other discussion of point 5? I have it now: "Despite several trade irritants, very positive trading relations continue to exist between Canada and the US. These areas of irritants--

Clerk of the Committee: I have "trade irritants." That is what I thought was said.

Mr. Chairman: All right. "These areas of trade irritants include the following: steel exports; softwood lumber tariff; corn countervail duty; auto pact; countervail, subsidies and dumping activities; dispute settlement inconveniences; and regional subsidy programs, etc." Passed.

Going back to point 4, Mr. Ferraro.

Mr. Ferraro: It reads, "The American trade imbalance is a major preoccupation in Congress and is seen in part to be the fault of unfair trade practices." The next sentence gives me a problem. "The trade problem is largely seen to be a problem"--and therein lies the problem I have--"of their trading partners...."

I do not think that sounds very good. I would ask the committee to consider that, instead of saying "seen to be a problem of their trading partners," it could read, "as a result of actions by" or "the responsibility of their trading partners." I do not think it is a problem; it is just ambiguous.

Mr. Knight: I think what they are trying to say is the trade problem--

Mr. Ferraro: It is not their fault.

Mr. Knight: --is largely the trading practices of their trading partners and not--

Mr. Ferraro: Or as a result of the actions.

Mr. Chairman: What about saying, "The trade problem is largely seen to be caused by their trading partners"--

Mr. Ferraro: That is fine.

Mr. Chairman: --"and not internal economic reasons such as a lack of competitiveness and high production costs"? Does that sound all right?

Mr. Ferraro: Yes.

Mr. McLellan: I think George Ashe had a comment to emphasize Ontario in number 4.

Mr. Chairman: Mr. Ashe wanted us to emphasize the problems of Ontario in dealing with that particular resolution.

Mr. McLellan: He made a point, starting off by saying that in this section we have to emphasize about US trade the importance of Ontario as a significant--

Clerk of the Committee: Yes, but he also said they can go into Ontario-Canada considerations.

Mr. Chairman: I do not know. I would not see Ontario being singled out, since most Americans have never heard of Ontario.

Point 6.

Mr. Mackenzie: On point 5, Mr. Chairman, I am wondering about the second sentence. I think Mr. Partington originally came up with "these problem areas of trade irritants include" or "among the problem areas of trade irritants are." You do not want to leave the impression that these are the only areas. They are the major ones but there are others.

Mr. Chairman: I was a little worried that we were looking at American ones closer than Canadian ones, but it does say "include the following."

Mr. Partington: The word "include" implies there are others.

Mr. Chairman: All right. Point 6.

Mr. McLellan: "6. Canada is still viewed in Congress as a high-priority trading partner and it may be possible to arrive at a special trade arrangement between Canada and the US."

I think that repeats to a certain extent what we said in point 3 above.

Mr. Ferraro: Why do we not take it out?

Mr. Chairman: Do we want to take it out? Okay.

Mr. McLellan: "7. Current world trade imbalances, such as, for example, agriculture, will have to be addressed in a co-operative effort in conjunction with trade development initiatives in individual countries."

In the discussion we had with Congressman Glickman, he emphasized the need for international co-operation on issues. That is what I was trying to get at here.

Mr. Chairman: They resolved it in Venice.

Mr. McLellan: Yes.

Mr. Chairman: Are there any problems with number 7?

Mr. Ferraro: It says "will have to be addressed in a co-operative effort." I think we should say "on a global basis," or something like that.

Mr. Morin-Strom: It kind of contradicts the last few words where we say "in individual countries." I am not so sure it can be solved in individual countries.

Mr. Ferraro: If what we are trying to say is that it is a global problem that has to be addressed on a global basis, then I do not think we are saying it in that sentence.

Mr. McLellan: What we could say is, "The current world trade imbalance is a global responsibility and includes areas such as agriculture, and this will have to be addressed in a co-operative effort in conjunction with trade development initiatives."

We could take off "individual countries" and say, "The current world trade imbalance is a global concern, which includes areas, such as agriculture, which will have to be addressed in a co-operative effort in conjunction with world trade initiatives."

Mr. Morin-Strom: Why do we not say "co-operative multilateral effort" or "multilateral forum"?

Mr. Chairman: "Current world trade imbalances, such as, for example, agriculture, will have to be addressed in a co-operative, multilateral effort in conjunction with trade development initiatives." Does that sound all right?

Mr. Ferraro: Why do we not just put in brackets "i.e., agriculture?" "Such as, for example," does not read very well.

Mr. Chairman: Do you mean "e.g. agriculture," as opposed to "i.e.?"

Mr. Ferraro: Yes. What does "i.e." mean? Does that not mean the same thing?

Mr. Chairman: "I.e." means "that is."

Mr. Ferraro: Okay then, "e.g."

Mr. Morin-Strom: So we put it in brackets. Take out the "such as," take out "for example"--

Mr. Ferraro: Yes. Take out "such as" and "for example."

Mr. Partington: "Such as" and "for example" mean the same thing.

Mr. Morin-Strom: Yes. You are saying just take out the words "such as."

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Mr. Chairman: "Current world trade imbalances (e.g. in agriculture) will have to be addressed in a co-operative, multilateral effort in conjunction with trade development initiatives." Does that sound all right? Is everybody happy?

Mr. Ferraro: Do you want to say "co-operative, multilateral effort" or "context"?

Mr. Chairman: Do you want to take out the word "effort"?

Mr. Ferraro: Do you want to say "effort, forum or context"?

Mr. Morin-Strom: "Forum" sounds good.

Mr. Chairman: "In a co-operative, multilateral forum, in conjunction with trade development initiatives." Is that what you are saying? Is everyone happy? Carried.

Mr. McLellan: "8. The United States still has an image of itself as the 'world leader' in trade and therefore wants to be seen to be taking the lead in a competitive trade environment."

I think that came out of that meeting with Don Terry and the House Small Business Committee.

Mr. Morin-Strom: What do you mean by "the lead" there? Do you mean the lead in terms of the biggest trader or the lead in terms of new trade negotiations? It is ambiguous where you are talking about being the leader.

Mr. Chairman: They want to set the rules.

Mr. Morin-Strom: Are you talking about the rules, the level of trading or competitiveness in terms of trading? I do not know.

Mr. Ferraro: Or addressing the problems in trading.

Mr. McLellan: I think at one time they set international standards for trade. They were seen as the strongest and largest traders, and seemed to set the rules.

Mr. Morin-Strom: You focused a little bit more on the trading rules and so on. If that is the case, we should change the wording because it says "in a competitive trade environment." To me, that means they want to be the lead in terms of competitiveness in trading, which is different from what you really want to say there.

Mr. McLellan: What I was trying to get at there was that United States still sees itself as being the largest trader and likes to see itself in the context of being a fair trader. I think they emphasized that, didn't they?

Mr. Partington: By "competitive," you are thinking of fairness--rules that are acceptable to all.

Mr. McLellan: I think they see themselves still as being number one in trade volume and, second, as being fair traders.

Mr. Ferraro: I do not hear any argument. I think Karl is absolutely right and I think I understand what you are trying to say, but I do not believe we are saying it as it is presently composed.

Mr. Chairman: So how do we say it?

Mr. Morin-Strom: They want to be seen as being the leading fair trader in the world, a leader in setting the standards of fair trade on the world scene.

Mr. Ferraro: Ray, what were you trying to say again?

Mr. McLellan: In that meeting we had with Don Terry, he said to us that the US trade imbalance from 1980 to 1986 had escalated to whatever it is right now. And he said, despite that serious trade imbalance situation: "We still see ourselves the world leader, in other words setting the international standards for trade. We still look upon ourselves as being free and fair traders and are still basically at the top of the heap in the world trading environment."

Part of this report is talking about observations, and the committee perhaps saw the United States as seeing itself in that light. I think if the US still sees itself in that light it is probably worth making an observation.

But maybe we could just even talk about that. Do we really want to say this or not? Does the US have an image of itself as still being number one, as being a fair trader, the top trader in the world? Is that an important observation? I do not know.

Interjection: I think it is an important observation.

Mr. Ferraro: I think it is. Why do you not say exactly what you just said?

Mr. McLellan: Is it very important to be in those words?

Mr. Ferraro: When you start putting in "lead" in the context of competitiveness, then I think you are changing the impetus or the thrust of what you are trying to say. It is a US trade concern and it is important to Americans that they are perceived as being number one and being fair traders.

Mr. McLellan: Shall I just rework that and then bring it back?

Mr. Chairman: Would it be undiplomatic for us to suggest that they want to set the rules? Is that provocative?

Interjections.

Mr. Chairman: It is a bit awkward.

Mr. Morin-Strom: What I get out of this would be something like this: "The US still has an image of itself as the world leader in trade and therefore it wants to continue to be the leading advocate promoting free trade and fair trade practices throughout the world.

Mr. Ferraro: Excellent. That sounds good. Do you want to say free trade or freer trade?

Mr. Morin-Strom: Or liberalized trade.

Mr. Ferraro: They have only one agreement, with Israel.

Mr. Morin-Strom: Do you want to use "liberalized"? Their objective is to move towards more and more liberalized trade.

Mr. Chairman: Yes, and that would meet their objective in dealing with us too.

Okay; "wants to continue to be the leading advocate promoting liberalized trade throughout the world."

Mr. Morin-Strom: "Promoting liberalized trade and fair trade practices throughout the world."

Mr. Partington: You are suggesting that "fair" and "liberalized" are not necessarily the same.

Mr. Morin-Strom: They want liberalized trade, but they want it under what they call fair trade practices. They are willing to put on restrictions and everything else. I think it is unfair trade.

Mr. Ferraro: All they want is an unfair advantage.

Mr. Chairman: It now reads, "The US has an image of itself as the world leader in trade and therefore wants to continue to be the leading advocate promoting liberalized trade and fair trade practices throughout the world."

Is everyone happy? Good stuff. You do not have to work tonight--so far.

Mr. McLellan: "9. The global marketplace is generally in need of new controls and regulations."

Mr. Chairman: All right; no problem with that.

Mr. McLellan: "10. The GATT is not entirely satisfactory in current world trading patterns, particularly with respect to dispute resolution for example." Heinz, particularly, was criticizing GATT.

Mr. Morin-Strom: We should not make that such an absolute statement. This is very much from the US perspective. What we should be saying here is the US finds that GATT is not satisfactory.

Mr. Ferraro: I think you have it under the headline, though.

Mr. Morin-Strom: The Americans really have a negative opinion, which I think is far more extreme than Canada generally or perhaps other countries around the world would have.

Mr. Ferraro: I do not have any problem putting that in, as long as you get it under the heading "US Trade Concerns," that it is from that perspective. It is alarming if you do not reiterate it in there, but as long as you know you are reading under the heading "US Trade Concerns," I think you are covered.

Mr. Morin-Strom: Yes, but on the other hand, leading into this we are saying, "The committee made the following observations on US trade concerns." I an not sure we should say that is our observation.

Mr. Ferraro: Are we not supposed to report on our observations?

Mr. Morin-Strom: I am not sure I agree that GATT is not entirely satisfactory in current trading practices.

Mr. Ferraro: So you would say the US thinks there is not a problem with current world trading patterns.

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Mr. Morin-Strom: I would say, "The US finds that the GATT is not entirely satisfactory...."

Mr. Ferraro: I think that is what we are saying. If you want to put that in--

Mr. Morin-Strom: That is what it is about. The US has an image of itself. We say the US has an image of itself. We did not say that--

Mr. Ferraro: That is fine.

Mr. Chairman: I think Rick is satisfied with that: "The US finds that the GATT is not entirely satisfactory," etc. Okay? Next?

Mr. McLellan: "11. Nontariff barriers (e.g. quotas) need to be addressed in trade negotiations to resolve unfair trading barriers."

Interjections.

Mr. McLellan: I think that is the US perception. Is that a US perception?

Mr. Ferraro: Do you want to say "in particular"?

Mr. McLellan: Where would you put that?

Mr. Ferraro: "Nontariff barriers (e.g. quotas) in particular need to be addressed...."

Mr. Morin-Strom: I think we should take the example out, because I think there are lots of nontariff barriers. Why put just one in, which is "quotas"?

Mr. McLellan: So, "Nontariff barriers need to be addressed in trade negotiations, to resolve unfair trade practices."

Mr. Chairman: You do not like--yes, okay; replace the second "barriers" with "practices"? Are we leaving the example "quotas" as it is or are we taking it right out?

Mr. Mackenzie: Taking it out.

Mr. Chairman: Taking it right out? "Nontariff barriers need to be addressed in trade negotiations, to resolve unfair trade practices."

Mr. McLellan: Number 12, "The US economy cannot depend strictly on the service sector, but rather it must redevelop its manufacturing profile." The point there was, in other words, bring the jobs home to American industry.

Mr. Morin-Strom: They are starting to rust.

Mr. Chairman: Is there any problem with that one? Okay?

Mr. McLellan: Going on to number 13, US trade legislation, on page 6 it says:

"The Congress has responded to the current US economic problems in part through two protectionist bills in the House (HR3) and the Senate (S490). Following passage in the House of Representatives and the Congress, these bills would be amalgamated in the 'conference action' phase prior to approval in the House and Senate and final approval by the President."

I did not refer to the veto there, but I do not think it is necessary.

The committee made the following observations under current US trade legislation:

"13. Congress does not see a conflict between protectionist trade legislation and future trade liberalization with Canada."

Mr. Morin-Strom: In the sentence, "Following passage in the House of Representatives and the Congress," you cannot say "the Congress," it would be in the Senate. The Congress is the combination of the two.

Mr. McLellan: Yes, that is an error. You are right.

Interjection.

Mr. McLellan: I put "Congress" and it has to be "the Senate." We could say, "Following passage in Congress," but anyway--

Interjection: That should say "Senate."

Mr. McLellan: Yes. Number 13, "Congress does not see a conflict between protectionist trade legislation and future trade liberalization with Canada."

Mr. Chairman: That is certainly an observation I made.

Mr. McLellan: Number 14, "Legislators are concerned with having a negative 'protectionist image' and generally support a free trade profile despite the protectionist mood in Congress."

Interjection: Some legislators.

Mr. Chairman: Senator Matsunaga said, "I am in favour of free trade except for sugar."

Interjection.

Mr. Chairman: Should you put some "Some legislators"? Do you want to put "some"?

Mr. McLellan: Certainly.

Mr. Morin-Strom: It is not "support." They want a free trade profile. What you are really saying is that individual congressmen and senators want to have the tag of the free traders. They are only protectionist when they are concerned about some particular industry or local concern or whatever, but they are all basically free traders.

Mr. McLellan: Do you want to take the word "profile" out? "Legislators are concerned with having a negative 'protectionist image' and generally support a free--

Mr. Ferraro: Trade concept?

Mr. Chairman: Of course, "profile" fits the whole thing.

Mr. Morin-Strom: "...and generally proclaim a free trade philosophy." They all claim to be free traders.

Mr. McLellan: "Proclaim a free trade philosophy."

Mr. Chairman: I would not say "free trade philosophy." It now reads: "Some legislators are concerned with having a negative protectionist image and generally proclaim a free trade philosophy despite a protectionist mood in Congress." Does that sound good?

Mr. McLellan: Okay. Number 15, "Existing American trade laws cannot be dismantled, thereby providing exemptions to countries with excessive trade surpluses with the United States."

This is a bit of a contradiction because what they are saying is, "We are after exemptions in the trade revenue law area." Then people like Senator Heinz said to us, "We have to protect those existing laws, and in the same breath we are talking about a free trade bargain.

I do not know how you reconcile this, because somebody may read that and say that particular observation seems to conflict with your earlier observation, but I think what we are seeing is a series of different observations, some of which enforce and others which contradict one another.

I think they were saying to us that we cannot have exemptions from these under trade remedy laws.

Mr. Morin-Strom: I think we should leave the word "thereby." Things can be dismantled in a lot of different ways, and it might not be just to provide exemptions. I think the point is that existing American trade laws cannot be dismantled to provide exemptions.

Mr. Morin-Strom: Say "In order to provide exemptions to countries like Canada" and, rather than "with excessive", "with large trade surpluses."

Mr. McLellan: I guess that goes back to that Gephardt amendment in which they tried to penalize Korea.

Mr. Chairman: I have a conflict with "like Canada."

Mr. McClellan: "The existing American trade laws cannot be dismantled, in order to provide exemptions to countries like Canada."

Mr. Chairman: But we do not have excessive trade surpluses.

Mr. Morin-Strom: No, you have to use the word "excessive" with "large trade surpluses," or with "trade surpluses."

Mr. Ferraro: It is an inflammatory word.

Mr. Morin-Strom: I do not think the comma is needed now.

Mr. Ferraro: Which?

Mr. Morin-Strom: The comma after "dismantled" is not needed now.

Mr. McLellan: So it is "Existing American trade laws cannot be dismantled in order to provide exemptions to countries with large trade surpluses with the US."

Mr. Chairman: Are you taking "Canada" out?

Mr. Morin-Strom: I like "Canada."

Mr. Chairman: Do you want it in?

Mr. Morin-Strom: Yes.

Mr. Chairman: Okay.

Mr. Morin-Strom: We are talking about Canada.

Mr. Chairman: Maybe we should make it clear that if we leave "Canada" in, there is an American perception that we have a large trade surplus that maybe we do not have.

Mr. Morin-Strom: Why do we not forget that? Why do we not just say, "In order to provide exemptions for countries like Canada," period, whether we have a trade surplus or not?

Mr. Chairman: Then that would get rid of the Gephart problem.

"Existing trade laws cannot be dismantled in order to provide exemptions to countries like Canada." Is that all right?

Mr. Morin-Strom: All right.

Mr. Chairman: Then we are not going to talk about why?

Maybe we should stop now to consider and then we will carry on as far as we can go. I do not know whether we can finish this morning. Is there any discussion about having extra time? I guess not, considering what Mr. Partington and Mr. Ferraro were saying earlier. If we do not finish this morning, we will be back again next Thursday morning at 10'clock.

Okay. Next is 16.

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Mr. McLellan: "16. Congress is pursuing a 'level playing field' in an effort to correct current trade imbalances in a managed trading program, which will give certainty to international trade, thereby reducing the use of discretion."

Mr. Chairman: Some of this is inflammatory to our viewpoint, but I guess that is right.

Mr. McLellan: Yes, we are still on--

Mr. Chairman: Yes, I know what you are saying. Are there any problems with 16? All right.

Mr. McLellan: "17. The American public generally supports the Congress in the reconciliation of the United States trading position vis-à-vis its global trading partners."

Mr. Morin-Strom: What does "reconciliation" mean?

Mr. McLellan: In other words, reconcile the large deficit situation.

Mr. Chairman: And obtain a fair advantage.

Mr. Morin-Strom: Does it mean the balancing?

Mr. McLellan: Yes.

Mr. Morin-Strom: Why not use that word?

Mr. Chairman: They do not mind a surplus, do they? An American surplus?

Mr. Ferraro: Why do we not say "the economic reconciliation"?

Mr. Morin-Strom: It has to do with talking relationships or something like that. I do not think it has to do with dollars and cents.

Mr. Ferraro: Why not say, "the economic reconciliation"?

Mr. Chairman: All right, Rick is saying "economic reconciliation" and Karl is saying "balancing."

Are there any other comments you want to give?

Mr. Morin-Strom: I do not like either of them right now. How do we know from our meetings what the American public supports anyway?

Mr. Chairman: These guys have all recently been re-elected, I suppose.

Mr. McLellan: In some of those meetings, they did refer to that.

Mr. Ferraro: What has that got to do with US trade legislation? I would just take it out.

Mr. Chairman: And just not have an observation on public opinion?

Mr. Ferraro: Not in that context of US trade legislation.

Mr. Morin-Strom: I do not think we can comment on American public opinion.

Mr. Chairman: Let us take it out.

Okay. Next is 18.

Mr. McLellan: Instead of "5490" that should be "S," so it reads:

"18. HR3 and S490 are broad in scope and are directed in part at subsidies, which are actionable, and dumping, which Congress feels should lead to damage assessment and industry compensation."

Mr. Chairman: Comments? Okay.

Mr. McLellan: "19. The Senate does not want discussions on a comprehensive trade agreement to be extended beyond January 1988. A potential Canada-United States trade agreement is viewed as a model for future trade discussions with other countries." It should be "ies." The last word is spelled incorrectly.

Mr. Chairman: Did you want to say "Senate" or "Congress" there? If anything, the House is probably even more adamant.

Mr. McLellan: Yes. Right, they talk about Congress. For example, on October 5, "the President must inform Congress of its intentions."

Mr. Ferraro: Congress is the House of Representatives, is it?

Mr. Chairman: It can mean the House of Representatives or it can mean both.

Mr. Ferraro: Or it can mean the House of Representatives and the Senate?

Mr. Chairman: Yes, it is very ambiguous. We do the same thing, I suppose, when we talk about Parliament. We should not be using that word unless we include the Senate, I suppose.

Mr. McLellan: Shall we say "Congress"? "The Congress does not want discussions...." Okay. Shall we do that last section?

Mr. Chairman: Are we happy with 19?

Mr. Morin-Strom: I have to leave.

Mr. Partington: I have to leave as well.

Mr. Chairman: Shall we adjourn? We will meet next Thursday, starting in the middle of page 7, where we left off. It does not prohibit anybody from working on these and raising some of these subjects again.

Mr. Ferraro: The only thing I do not like--and I was quite annoyed--is that we have "Ontario-Canada considerations." We should have "US" in there somehow, "Ontario-US considerations."

Mr. Chairman: Just changing that title? Yes, I think there are concerns probably in this country that were not around in April--

Mr. Ferraro: If they are Ontario-Canada considerations, what the hell were we doing in Washington?

Mr. McLellan: Do you want to put all three, "Ontario-Canada-US"?

Mr. Ferraro: I do not know why you have "Canada" in there, though.

Mr. McLellan: Let us say "Ontario-US" considerations.

Mr. Ferraro: Yes, I like it that way. I do not know why you have "Canada" in there.

Mr. Chairman: I guess "Canada" is obviously involved in our thinking.

Mr. McLellan: Shall we make these corrections for next week?

Mr. Chairman: Yes.

The committee adjourned at 11:55 a.m.

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

TRIP TO WASHINGTON

THURSDAY, JUNE 18, 1987

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

CHAIRMAN: Cooke, D. R. (Kitchener L)
VICE-CHAIRMAN: Ferraro, R. E. (Wellington South L)
Ashe, G. L. (Durham West PC)
Cordiano, J. (Downsview L)
Haggerty, R. (Erie L)
Mackenzie, R. W. (Hamilton East NDP)
McFadden, D. J. (Eglinton PC)
Morin-Strom, K. (Sault Ste. Marie NDP)
Ramsay, D. (Timiskaming L)
Stephenson, B. M. (York Mills PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:
Knight, D. S. (Halton-Burlington L) for Mr. Cordiano
Partington, P. (Brock PC) for Miss Stephenson
Reycraft, D. R. (Middlesex L) for Mr. Ramsay

Clerk: Carrozza, F.

Staff:
McLellan, R., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Thursday, June 18, 1987

The committee met at 10:07 a.m. in committee room 1.

TRIP TO WASHINGTON

Mr. Chairman: I call the meeting to order. I should inform the committee that last week we made some attempts--on the misunderstanding that Mr. Wilson was going to release his tax reform paper this afternoon--to organize a reviewing and briefing session for this afternoon. When I realized it was tonight, I did not think there was really anything very useful that this committee could do as a group. It is, of course, a document that will be of vital interest to this committee.

Mr. Carrozza has just requested a motion to the effect that documentation be obtained that might be of assistance to us in reviewing this in whatever time we can. We now have permission to sit in September, etc., and there are all kinds of clouds in the skies as to whether that will happen.

I almost saw Mr. Ashe's hand go up. Do you so move?

Mr. Ashe: Whatever.

Mr. Chairman: Mr. Ashe moves that the clerk make arrangements to obtain copies of Mr. Wilson's white paper, to then present it to the committee so that the committee can in its time make some arrangements to review the paper and make recommendations to the Treasurer (Mr. Nixon) concerning it.

Mr. Morin-Strom: Will this review be next Thursday?

Clerk of the Committee: No. Whenever the committee decides to set time aside for that.

Mr. Morin-Strom: You mean in the fall?

Clerk of the Committee: Yes.

Mr. Chairman: We recommended that the Ministry of Revenue assess the implications of the paper as soon as it was released. I presume they are going to do that anyway, but in any event--

Mr. Ashe: The Ministry of Treasury and Economics and the Ministry of Revenue will be doing that without any direction.

Mr. Chairman: Is there any other discussion?

Mr. Ashe: I think it would be presumptive to indicate that the appropriate minister is a complete nitwit--which I do not think he is--by putting forth that kind of a motion. I am giving him credit--this is Bob Nixon.

Mr. Chairman: I do not think he is either.

Mr. Ashe: No, I agree.

Interjections.

Mr. Chairman: Let us move on to the business at hand. Mr. McLellan has provided each of us with a document that corrects the last document in so far as his understanding is concerned of what we have changed. Perhaps we should move to wherever we left off last time and finish it. Then maybe we can look back at the document that he has corrected. Would that be appropriate?

Mr. McLellan: Last day we left off on page 7. Halfway down, we had decided to change the title of--first, I will just mention two things before we do pages 7 and 8. It was decided that we would change the title in the middle of page 7 from "Ontario/Canada Considerations" to "Ontario/United States Considerations." So that was done.

Second, Mr. Ashe had recommended that we should put a phrase or two in with respect to the importance of Ontario's trading position vis-à-vis the United States. I did that in the second paragraph on that section "Ontario/United States Considerations." I guess we can just proceed from that. But I will tell you that is an addition.

Mr. McFadden: Which copy are we working on? Are we working on draft 2 or draft 1?

Mr. McLellan: Draft 2, June 18.

Mr. Chairman: That is at page 8.

Mr. McLellan: I am sorry? Yes, that is the new page 8.

We start at "Ontario/United States Considerations" as the title.

"As pointed out earlier, the committee's objectives were generally to exchange ideas in an open forum on the current Canada-United States bilateral trade negotiations and secondly to express particular viewpoints and perspectives. On this basis, the observations in this report do not necessarily represent a consensus.

"The discussions highlighted several considerations of relevance to the negotiations and the continued success of future trade relations between Ontario and the United States.

"According to Canadian government documents, Canada and the United States have the largest and most complex bilateral trade relationship. It is also among the most open with approximately 80 per cent of the goods being traded without tariffs. The province of Ontario has in the past and continues to be the most major participant in this trading partnership, representing 60 per cent of Canadian exports to the United States and 75 per cent of imports in 1986."

I have those figures to show anybody to wants to look at them.

Mr. Morin-Strom: I would like to see them. I have never heard that they were that high. I thought they were closer to 50 per cent, but I would like to see those figures.

Mr. McFadden: Which part--

Mr. Morin-Strom: The 60 per cent, I guess, does not sound like it is out of line, but 75 per cent sounds a little high.

Mr. McLellan: Do you want to see those right now?

Mr. McFadden: I will tell you why they may be that high. Remember, Ontario is the point of entry--

Mr. Morin-Strom: It may not be the destination. That is the point.

Mr. McLellan: I would think that probably is true in terms of point of entry, though.

Mr. Ashe: Particularly the auto sector would affect the second number.

Mr. McFadden: That is the basis on which these figures would simply be derived--point of entry.

Mr. Morin-Strom: Then they are not necessarily the relevant ones.

Mr. McLellan: I spoke with the research division of the Ministry of Industry, Trade and Technology on June 3. The figures they gave to me, which are the most up to date, unpublished, were exports to the United States from Canada, $93.2 billion and from Ontario, $56.2 billion. Imports from the United States to Canada, $77.3 billion and to Ontario, $58.3 billion.

Mr. McFadden: I stand corrected. Those figures would indicate that we are consuming that, unless the ministry's figures reflect goods brought in here, purchased by wholesalers and distributors and then sent out from Ontario.

I think it would probably be pretty accurate to say that an awful lot of the wholesale and distribution for all of Canada is done out of Toronto. It may well be that it is brought in here and bought here; then the bills of lading would show it being bought in Ontario. I would have to imagine that some of that would go out of Ontario.

This figure is not necessarily inaccurate, though. It means it landed here anyway. I think that is what the ministry's figures are indicating: it landed here.

I would think we are probably more accurate on our exports in the sense that we have Ontario manufacturers and natural resource suppliers, so we can estimate what is going out of here. I think it is tougher when it is coming in to know the final destination, whether it is in Ontario or out of Ontario.

Mr. Ashe: I think it would be interesting if we could clarify that, because I agree. Frankly, I am not overly surprised at the 60 per cent, but when you think of the configuration of Canada and the population of Canada, it just sounds virtually impossible that we consume even close to the 75 per cent.

Mr. Chairman: Unless you consider automobiles. That is a big sector, is it not?

Mr. Ashe: Undoubtedly, it is a big part of the numbers, but perhaps they have a further breakdown to show where it goes; in other words, where the consumption takes place, if you will. We could consult some of the federal trade people.

Mr. Chairman: Do you want to take that sentence out? Is that what you mean?

Mr. Morin-Strom: I am not saying that. I think we should consult to clarify those figures and perhaps assure that is the figure being used by the federal government. StatsCan or the trade office must have distribution figures. I do not want to put in figures that are out of line with theirs.

Mr. Chairman: You would suggest we hold it down for further clarification with the federal trade people.

Mr. Ashe: Maybe the Ministry of Industry, Trade and Technology has a further figure available to it, whether it is its own or from the federal numbers. We are only 35 per cent of the Canadian population. I think it would be virtually impossible for us to be consuming 75 per cent of the imports. Appreciating that there is a further breakdown, that a lot of these things go into our manufacturing aspect of Ontario's operation--some of it probably is an import and then an export--it still seems exceedingly high.

Mr. Chairman: I do not think it would be that hard for Ray to check this out with the federal figures. I think we have them.

Mr. Ashe: I do not think that is a negative. I think if we can just further clarify it to show how significant it is, even coming in here, albeit maybe some of it ends up being consumed elsewhere. I do not think that is a figure to be discarded. It is a very positive one, but we should go further and clarify it if we can.

Mr. Chairman: Sometimes these figures can be very skewed, particularly with the auto pact. I have found figures that show Ontario has a $10-billion trade deficit with Michigan. It probably does not mean that much, but it is interesting.

Mr. Morin-Strom: Again, that must have to do with points of entry and leaving.

Mr. Ashe: We bring in a lot of auto parts that end up going into the assembly process here in Canada.

Mr. Chairman: Then we may ship them out in some other way.

Mr. Ashe: I am sure that is a significant number of both import and export.

Mr. McFadden: That is the problem with looking at it strictly from a point-of-entry point of view. You can get really distorted figures.

Mr. Ashe: I do not think the entry is a problem if we bring it in and consume it here in Ontario, whether it is as consumers or as part of building an automobile. That is valid. It goes into Ontario and it is, in effect, consumed and/or goes out of Ontario; but it is when it ends up going to the other nine provinces....That is something where, if we can break down that number a little more, it might be more meaningful.

Mr. Chairman: If these figures are confirmed, do you want to leave them in and explain them a little more?

Mr. Ashe: If we can. I am sure they are accurate. It should clarify why they are accurate.

Mr. McFadden: There is a way you could word this so it is not inaccurate. You talk about shipments. You could say that 75 per cent of

American exports to Canada are shipped to Ontario. That seems to be the figure we have. It is the value of shipments, not necessarily that we are consuming it all. We may be consuming a good part of this.

1020

Mr. Chairman: We could say 75 per cent of shipments to Canada enter Ontario.

Mr. McFadden: I think that is what that figure states. What we cannot comment on is whether it is trans-shipped to other provinces. Obviously, there are probably components that are brought in that may be manufactured here and then ultimately the final product winds up going to other provinces or is exported back to the United States or other countries. It is a complicated situation. I think that what they are really talking about here is actual shipments into this province. Whether they are consumed here is the question.

Mr. Chairman: It would be clearer, then, to say 75 per cent of the United States shipments to Canada in 1986. Would that solve it?

Mr. Ashe: Frankly, I do not think we should change it all until Ray is able--whatever way he finds out--to straighten it out and add to it. It may even be completely accurate as it is. I doubt it; but it may be. Why are we trying to come up with some words when we do not really know what we mean yet?

Mr. McLellan: Let us go back one minute. This is it. I had a conversation; these are unpublished figures from the ministry and she read them over the phone to me. I can go back and doublecheck these; then we can clarify if you want to put the word "shipment" in, which would help somewhat.

Mr. Ashe: Do not forget. We are not challenging that the figures are wrong. It is just, what is the meaning of the figures?

Mr. Chairman: I think Ray knows what the problem is. We will leave it in his hands to clarify that sentence.

Mr. McLellan: We are on page 9 at the top.

"The committee made the following observations on the Ontario/United States considerations:

"18. There is an extreme competition in the United States for the attention of Congress by political action committees, business/industry groups and trade/labour organizations. Japan and Israel spend substantial amounts to lobby Congress and have apparently received attention proportionately.

"19. It may be necessary to lobby and to educate Congress on the importance of Ontario's interests as a major trading partner. This could be done through an enhanced provincial profile in Washington and secondly through coalitions, which are an integral component in the American political system. In addition to the work being done by the Canadian ambassador on behalf of the Canadian government, the province of Ontario could provide information to the Congress and the United States, specifically to focus the debate. It is necessary to 'factor-in the political equation' in the talks."

Mr. Chairman: That looks written with care.

Mr. Ashe: I appreciate that. Maybe you better explain to me what you are saying. "This could be done through an enhanced provincial profile in Washington"--that is clear--"and secondly through coalitions which are an integral component in the American political system." Coalition with whom?

Mr. McLellan: I was thinking that we met with the Northeast-Midwest Coalition; so in a sense I guess we were legitimizing that association. I was referring in particular to the meeting we had with the law firm that second day. They stressed at that time the importance of the coalitions and the extent to which coalitions can enhance certain policies or positions. I think we tried to do that with that breakfast meeting and I was referring to that particular session.

Mr. Ashe: Okay. I thought that was what you meant. This reads to me about one way the province can enhance its operations--by becoming a coalition with somebody else, whether it is Quebec or Tokyo or whatever. I know what you just said; but that is not what this says to me, for somebody reading it for the first time.

Mr. Chairman: I was a little confused at the way they used the word "coalition" to some extent. I noticed in this morning's op-ed page of the Globe and Mail, the Northeast-Midwest Coalition seems to have solidified a stand on having the auto pact as part of the bargaining process in the trade negotiations.

Mr. Morin-Strom: I was thinking about that too. I do not know where this idea came from. I cannot recall the committee endorsing working in coalition. To me, it has the same connotation as it has to Mr. Ashe, that we should be working at forming coalitions of lobbyists to get a particular point made if we have a particular point on some legislation. I am not sure we should be advocating doing that.

Mr. Chairman: Do not forget this is a list of observations, and it was one that was discussed, I think, when we were down there.

Mr. Morin-Strom: This is saying, it "could be done through an enhanced provincial profile in Washington"--I agree with that one--"and secondly through coalition"--and I disagree with that one.

Mr. McFadden: The point this is making, and I recall the meetings we had on this, is that the tendency in the American political system is to develop coalitions around certain issues, where American groups, not necessarily foreign groups, will make sure various interests are at least kept in mind when legislation is being considered and so on.

One thing that became clear was that at this point in time there is little or no effective coalition in Washington that relates to Ontario or Ontario's interests. Other countries have been effective with developing coalitions. Israel has been mentioned as one. Japan certainly; they have quite a powerful coalition of auto dealers and various other people who deal in their products.

I do not think this is something the Ontario government should be involved in financing, for example, but I would see nothing wrong with our encouraging the formation of coalitions or any groups that seem to be favourable to our interest--to provide encouragement and information to them, or whatever.

The whole concept of coalitions is spreading in Canada as well. Look at the number of coalitions of one type or another that have cropped up here in the last five or 10 years, which never existed before. I do not think there is anything revolutionary about this.

What was suggested to us in our discussions was that to be effective down there, besides government representation it is useful to mobilize opinion in the United States that is favourable to this country, for one reason or another, to assist us when we get into a fight.

If someone is attacking, say, the steel industry, the auto industry or farmers or some other group, it would be useful to find Americans, not just our representatives in the embassy, to go out and work to help us, pointing out the fact that they depend on us for their jobs, or our market is valuable to them and they do not want to have a problem with us, or our exports are essential to their industry, whatever it might happen to be; they want our timber, they want our steel, or whatever.

Having Americans who are sympathetic and understand our position approaching their congressmen and senators is probably going to be more effective over the long run than having the ambassador and one or two people working for him or someone from Ontario doing it. If that is all we have going for us, then we have to do it and that is why we need a presence there.

Maybe we could clarify what we are saying, but it seems to me there are natural constituencies of people in the United States who have an interest in seeing that trade carries on, that it is not disrupted all the time by one thing and another. That is the point we should be making. I do not think it has to be surreptitious or anything; I just think we should be in communication with and encouraging Americans who have a good relationship with us to make it clear to their congressmen and senators and the administration that this is a valuable trading link and it should not be disrupted.

Mr. Haggerty: Could I have a footnote or an explanation of--

Mr. Chairman: George has had his hand up for a while.

1030

Mr. Ashe: I think Mr. McFadden made my point. He was talking about a completely different thing than what Mr. McLellan was saying. Correct me if I am wrong, Ray; you were referring to the coalitions we met with, the political coalition, the legal firm, etc. I accept and understand what you are saying. I think what we have to end up saying is both. I think what Mr. McFadden is talking about is extremely helpful, but that is a completely separate thing. Do we have the aptitude, the capability and the potential people to work with those groups?

That is one issue. The other is, and I thought it was the one you were saying although I would suggest you change the words, that it is not only working with--let me read you the sentence I have, which is completely separate from David's issue, which I think needs to be addressed separately: "This could be done through an enhanced provincial profile in Washington including working through and with the political coalitions which are an integral component in the American political system."

This is the point of the enhanced operation there. You do not just work directly with a congressman or a senator; you sometimes have to work indirectly with coalitions.

The point that David is making is completely separate and exceedingly valid. Maybe this is something we have overlooked, that there are people down there, as it is in reverse up here. Whenever there is talk about closing the border or putting up a tariff, there are people here who are affected. So it has to work both ways. In my view, it is an extremely valid and separate point.

Mr. McFadden: Yes, they are both coalitions.

Mr. McClellan: I think one of the points with the American system is that it is much more what one calls pluralistic in the sense that you have multiple groups of specific interests. In Canada we use the party system more than they do. But what they tend to do is get together with 1,000 or 5,000 or 100,000 people and go out and form coalitions. This is their leverage system.

One of the things we are talking about then is private sector coalitions as well as public sector coalitions. When you talk about the manufacturers' association, which is the private sector, in Israel or Japan we are talking perhaps about public sector government coalitions. I think your wording does clarify it.

Mr. Ashe: Would you like me to read it again, or did you get it?

Mr. Chairman: I have got, "profile in Washington, including working through and with the political coalitions."

Mr. Ashe: "Which are an integral part or component."

Mr. Chairman: Et cetera.

Mr. Ashe: Yes. So I have taken out "and secondly," because I think that is really all one and the same. You are identifying the enhanced profile including working indirectly through the coalitions.

The other issue of coalition with the private sector is, I think, very valid but a separate point.

Mr. Haggerty: Maybe a footnote at the bottom could give an explanation in detail about coalitions. I think that is what David was signalling there too.

Mr. Chairman: Do you still think we need this if we have the wording the way George did it?

Mr. Morin-Strom: Yes, we do.

Mr. Chairman: "This could be done through an enhanced provincial profile in Washington including working through and with the political coalitions which are an integral component in the American political system." That does not really tell us what they accomplish in the American system.

Mr. Morin-Strom: Another point that has to be made is that the federal government, it would appear, could be doing a lot more in that area. They do not seem to have the staff to be able to do the necessary work compared to what some of the other countries are doing.

Mr. Chairman: Would it be appropriate to add another sentence to item 18 when we say, "Japan and Israel spend substantial amounts," and perhaps contrast that to what our federal government is doing?

Mr. Ashe: It is pretty hard to compare ours with Japan, but we can sure compare it with Israel. As a province I think we are bigger than Israel, are we not?

Mr. Chairman: Yes. We are bigger trading partners with Japan now. Why can we not compare with Japan? We are bigger trading partners.

Mr. Ashe: In that sense, yes. Not for imports, I do not think.

Mr. Morin-Strom: In front of the Japan and Israel statement, you could put, "In contrast with the relatively low profile of the Canadian embassy operation"--

Mr. Ashe: Low profile, low budget.

Mr. Morin-Strom: Low profile, low budget; why not?

Mr. Mackenzie: You will probably have Gotlieb screaming about that.

Mr. Ashe: Especially his wife.

Mr. Chairman: "In contrast with a low-profile, low-budget Canadian presence in the United States, Japan and Israel spend substantial amounts," etc. How about that? Hopefully, that will not be interpreted as saying we should just go out and spend money, but we want to accomplish something.

Mr. Morin-Strom: I like George's suggestion.

Mr. Chairman: With that addendum, we have gone back to 18. Is it all right now?

Mr. Ashe: I think the point David makes is a valid one, that maybe it should be a completely separate observation with a number all by itself.

Mr. Chairman: All right.

Mr. Ashe: "It would be appropriate to investigate," etc. I am not sure of the words. David has it in mind better than I do. Maybe he is working on it right now.

Mr. McFadden: I think it may say all we need to say. If we want to focus more specifically on this kind of thing, we could use wording like this: "Special efforts should be made to work with organizations which depend on Ontario as a source of products and raw material or as an export market."

Mr. Chairman: Would that be a separate point, or is that part of 19?

Mr. McFadden: No. I think it could just go in as part of that section. I am just mentioning that this is to clarify that we should make an effort to work with the organizations which depend on Ontario as a source of products and raw materials or as an export market.

Mr. Mackenzie: Are you not in effect saying that with the suggestion that George came up with? I have no objection to what you said.

Mr. McFadden: No. All I was saying was that you were calling it a political coalition. Actually, it was not until we got talking that we realized that there are really two sets of coalitions. There is the

Northeast-Midwest Coalition, which is a coalition--there are a lot of other coalitions in Congress--and then there is the private sector, everything from business organizations, union organizations, farm organizations and all their coalitions and everything else whirling around.

Without making this into a book, one sentence would just flag that. I just left it as "organizations" rather than "coalitions" because it may not be a coalition. The wording I put forward was, "Special efforts should be made to work with organizations which depend on Ontario"--and I assume we are talking here basically just about Ontario--"as a source of products and raw materials or as an export market."

Mr. Chairman: Are you seeing that at the end of 19?

Mr. McFadden: You could put it in either right after where "political system" appears or at the end, whichever you want. It just made some sense to put it in there because it goes along with the--

Mr. Chairman: Yes, I think you are right.

Mr. Ashe: Nineteen is becoming exceedingly long--it is long now..

Mr. McFadden: Although it all connects.

Mr. Ashe: It all connects, yes.

Mr. McFadden: I just thought it was interesting to note that the International Trade Commission came out with a recent study in Washington which argued against a lot of their protectionist legislation. It could be argued that it would increase the input costs of American industry and ultimately make them less competitive. There are people down there who are not crazy about what is going on; it is just that I do not know if they are getting much airing right now.

Mr. Chairman: Is there a consensus that that goes in after the words "political system" in that sentence? Is everyone happy? Next is 20.

Mr. McLellan: "The 'fast-track' approach may not allow the necessary research to determine full impact of a free trade agreement on all sectors of the Ontario economy over the short and long terms."

Mr. Haggerty: Do you have a definition of "fast track" any place in the report? Many people would not know what it was. Even members of the Legislature would not know what "fast track" would indicate.

Mr. Chairman: No. We do not have one in the report.

Mr. Haggerty: That is what I said. It is American.

Mr. Chairman: Basically, the approach is--

Mr. Haggerty: We should explain it.

Mr. Chairman: This is not exactly a background paper, though.

Mr. Haggerty: We can put it in as a footnote or something.

1040

Mr. McFadden: Why do you not say--so people do not think we are talking about the railroads--one of the options is "a fast-track approach under the US Trade Act"?

Mr. Chairman: Pursuant to the US Trade Act?

Mr. McFadden: If we spell it out, at least they will know what we are talking about.

Mr. Chairman: The question is being asked, did we agree to have a footnote defining "coalitions" as Ray had mentioned.

Mr. Haggerty: I am just thinking of "fast track"--

Chairman: We are just moving back to 19. Ray is not certain. I did not think we had, but--

Mr. Ashe: I thought there was agreement that the change to the sentence took care of it.

Mr. Chairman: Okay. Getting back to 20 again, "The 'fast-track' approach pursuant to"--whatever the proper name of the act is--"may not allow," etc. Okay.

Number 21?

Mr. McLellan: "The United States is generally not clear on the legal and political roles assumed by the provinces in the implementation phases of international agreements. The Canada-United States free trade discussions are seen to be complicated by the involvement of four levels of government (federal/state and federal/provincial). Provincial jurisdiction could be clarified."

Mr. Ashe: I am not sure I got that feeling, frankly. I got the feeling that it is complicated by the three levels of government: federal in the United States, which was supreme in that regard, and federal-provincial from Canada's point of view.

Mr. Morin-Strom: In the United States, it was not a federal-state problem at all. Federal has always been first at the executive branch. The point that they made to us--they said the President has a role and the Congress has a role; and in Canada the analogy is the federal government and the provincial government.

Mr. Ashe: The states have no role at all down there.

Mr. McFadden: That is the point that came up with that law office, remember? That is what they said. We follow that. You are absolutely right, Karl. It was the administration versus Congress; in our case, it is federal versus provincial. You had it partly right, Ray; you have the wrong--

Mr. Morin-Strom: We say "levels of government." What if we were to say "branches of government"?

Mr. McLellan: If we changed that to "involvement of four branches of government"--

Interjections.

Mr. Haggerty: Just on that point, for clarification: I think I mentioned to one of the senators--they were not too happy with our style of government, because they thought that the provinces had more say than the federal government--that the provinces act as a check valve, the same as the Senate and Congress do when the President sets the rules or the policy. I said that was a check valve in our system, that the federal government has to be responsible to somebody too, and that is the provinces in general.

Mr. Chairman: We did not mean to disabuse them of--

Mr. Haggerty: Maybe we should put "the President's policy or cabinet's policy and federal states" and forget about the other 51 states, because it is the cabinet over there that rules on the American side. The other two are check valves in the system to see that there is some improvement on the legislation that the cabinet may be putting forward.

Mr. Morin-Strom: I think the point is that while the trade negotiations go on basically between the administration, representing the President, and our federal government, on both sides in the end, for a comprehensive deal to be approved, the Congress as well has to approve in the United States and the provinces as well are going to have to agree in Canada.

Mr. Haggerty: And Congress is defined as district--

Mr. Morin-Strom: Congress means the House of Representatives plus the Senate.

Mr. Haggerty: They go by districts, though, not by states.

Mr. Morin-Strom: No, the Congress is both; it includes the senators. The House of Representatives means just the districts. The Senate is senators. Congress means both.

Mr. Chairman: We are having a little discussion here about the American Constitution. I am just wondering whether saying, "Provincial jurisdiction could be clarified," would be misinterpreted in a report that we are doing.

Mr. Ashe: It is a valid statement, I can tell you. I will bet we all have different opinions, right around this table, as to what jurisdiction and what veto, if you will, the provinces have. I do not think it is quite as absolute as some of you may think.

Mr. Morin-Strom: I agree.

Mr. Ashe: I think we agree.

Mr. Chairman: It is something that may well end up in court--

Mr. Ashe: It could very well be.

Mr. Morin-Strom: It depends what you are trying to implement too.

Mr. McFadden: What does the last sentence mean to indicate, Ray?

Mr. McLellan: I should mention too, Karl, you made earlier reference to this point on coalitions. The way this report happened was that I took

notes and kind of bashed it out. We did not necessarily say we should talk about coalitions, or this, or that; it was just a matter of writing out 20 or 25 observations I had made. I did not get any instructions to talk about coalitions. We can throw it out or leave it in. However, that is how it happened.

Anyway, my point on number 21 was in reference to the meeting we had with Senator Heinz. When we were meeting with him that Monday or Tuesday, he had said he was going up to Ottawa on Friday. We got into a discussion about what authority the province of Ontario has over this agreement. In other words, if it is ratified by the federal government, in the final implementation phase, is the province of Ontario going to stop the treaty?

He was not exactly clear, in my mind, as to what authority the provinces had over a treaty like this. That is why I put that particular point in there. I felt, if in some way, the province of Ontario's jurisdiction vis-à-vis international treaties was clarified, perhaps to a certain extent it would put their minds at rest. Anyway, that is the way the point came out.

Mr. McFadden: I think you have a problem there. It is obvious the constitutional experts probably do not agree. It would depend on what is in the agreement, what the jurisdiction would be.

I had a different view of what you have said, so that is why I wanted to ask you what you meant. My reading of it was that the situation--it is unfortunate--cannot be cleared up. It is rather unclear. I do not know, though, that anything anybody can do here, besides claiming what the jurisdiction is, really is going to clear anything up much. All we can repeat is that we appear to have jurisdiction under the Constitution. Then you have got all these grey areas. It is hard to tell how it fits in. Remember the professor we met in Ottawa who claimed the trade and commerce power could knock us right out of the box on everything. I do not agree with that.

Mr. Ashe: Where in the Constitution do you get the idea that the province has jurisdiction over areas other than those that are exclusively given to the provinces by the Constitution? That sure does not include, generally, agreements with other countries and it does not include most of the things that would be involved. If we were selling education, then it might be.

Mr. Chairman: Is the issue not the extent to which we can control implementation of those agreements? I do not think anyone is claiming--

Mr. Ashe: Well, in a technical sense.

Mr. Chairman: --we have the right to negotiate them. As David says, we had one constitutional expert who claims that we could be overridden on that--

Mr. Ashe: I agree. I think that--

Mr. Chairman: --and that the federal government could come in and force us to put American wine in our sauce.

Mr. Ashe: I am not arguing against that. I am agreeing with that expert saying the federal government could, for all practical purposes, complete an agreement which would end up standing up in court and could thumb its nose at the provinces. Now, in practical terms, it would not work out to anybody's benefit. That is acknowledged. However, it is legal.

Mr. Chairman: I am wondering if the committee would agree the last sentence opens up a can of worms--

Mr. Ashe: Why not just take it out? Take it out.

Mr. Chairman: --and should be taken out.

Mr. McFadden: Throw out the last sentence. The rest stands on its own, it seems to me, does it not?

Mr. Ashe: We have clarified the levels of government, which has now become (inaudible) I think that last sentence is valid, but it works without it.

Mr. McLellan: If we said in the second sentence, "The Canada-United States free trade discussions are seen to be complicated by the involvement of"--we had said "four branches" but federal and provincial are not branches--"the involvement of the Congress, the administration" and then I had "federal-provincial" or "federal and provincial governments in Canada."

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Mr. McFadden: We have a technical problem here. The problem is that Congress and the administration are really one level of government, they are different branches of one level; whereas in Canada, we have two levels.

Mr. Morin-Strom: Jurisdiction?

Mr. Chairman: He has taken the word "levels" out--"complicated by the involvement of the Congress, the US administration, the federal and provincial governments of Canada." "The US Congress and administration?"

Mr. Haggerty: The states themselves have very little say in the matter of the free trade bill.

Mr. Ashe: They have none.

Mr. Chairman: We are told they have nothing, but then when we got talking about banks, sometimes we heard waffling on that issue, did we not?

Mr. Haggerty: Yes, but banks are different. You have--

Mr. Chairman: When suddenly we were saying, "You could walk in, then, and reorganize the banking system in the United States," I think I heard some argument to the contrary. I think that is a constitutionally grey area in the United States.

Mr. McFadden: They have divided jurisdictions in banking. That is the problem.

Mr. Chairman: Maybe we can throw the states in or not. I do not think it is the major issue. The Congress is the major issue.

Mr. McLellan: At one time, I think it was in that luncheon thing, we did talk about the states as well. Anyway, that is why it is there. Did we agree on that?

Mr. Chairman: How have we got it now? We say, "complicated by the involvement of the United States Congress, administration and the federal and provincial governments of Canada." Is that right?

Mr. McLellan: Yes.

Mr. Chairman: Twenty-two.

Mr. McLellan: "The Congress feels that the 'world trading system' does not always operate in an ideal way and therefore, there is reason for distrust and a need for corrections in the system. Ontario has historically been a responsible trading partner and may be promoted in this light against current protectionist legislation."

Mr. Ashe: Conclusion.

Mr. Chairman: All right.

Mr. McLellan: "As a trading nation, Canada, and particularly the province of Ontario, have major interests in the maintenance and enhancement of market share with the United States and other trading partners. The trip was particularly valuable in that it afforded members of all parties the opportunity to exchange views on numerous trade issues. This report, as mentioned at the outset, does not make assumptions on the appropriateness of a trade agreement with the United States, but rather reflects general trade concerns of importance to Canada and particularly to the province of Ontario."

Mr. Morin-Strom: I am not sure about the word "enhancement." It might be inclined to mean an increase in market share.

Mr. Ashe: That is what it says, "enhancement of market share with the United States."

Mr. Morin-Strom: That we increase the market share? I do not think that should be in the conclusions, because I cannot agree with that.

Mr. Ashe: We do not want to get more market share of exports?

Mr. Morin-Strom: I do not think we should be pursuing exports as a greater percentage of our economy. We should be trying to do more for ourselves internally, advocating moving to 40 per cent--

Mr. Ashe: That is baloney.

Mr. Chairman: Just a minute.

Mr. Ashe: Our whole operation is geared on increasing our exports to all parts of the world.

Mr. Morin-Strom: No.

Mr. Ashe: We have capacity to do it. I think we should be able to sell it. There is no way I will agree that is not a logical conclusion.

Mr. Chairman: I think what Karl is saying is that our aim, our conclusion, is to try to have our cake and eat it too.

Mr. Ashe: Sure it is.

Mr. Chairman: We would not mind having a greater share of United States imports. I do not think you would oppose that.

Mr. Morin-Strom: My concern is that if it implies a greater economic integration of the two countries, I am opposed to that. I can understand George being in favour of it, because philosophically you agree with that. Philosophically, I disagree with greater economic integration of the two countries. I am not saying I want to go directly in the opposite direction, but philosophically, I do not think we can say there is three-party agreement that we want greater economic integration of the two countries.

Mr. Ashe: That is not what it says.

Mr. McFadden: If you read the whole sentence, though, that does talk of other trading partners; it does not just focus on the United States.

Mr. Chairman: No, that is right.

Mr. McFadden: It talks about other trading partners.

Mr. Ashe: "Maintenance and enhancement of market share with the United States and other trading partners." We are saying we can open up more markets for our manufacturers, etc. That has to be a good thing. It starts here--

Mr. Morin-Strom: Why do we not change the wording from "market share" to "maintenance and enhancement of our trading relationship"?

Mr. Chairman: And simply say "of all our trading partners" without--

Mr. Morin-Strom: With the United States and all other trading partners.

Mr. McFadden: I do not see any problem with that change.

Mr. Ashe: It says the same thing. I do not care.

Mr. Morin-Strom: Rather than focusing on share.

Mr. McFadden: I was not sure if market share was what we are getting at, either. I think we want to extend--

Mr. Mackenzie: The all-of-your-eggs-in-one-basket deal is the connotation that worries some of us.

Mr. McFadden: I think there is an overwhelming argument for diversifying our markets.

Mr. Chairman: "Maintenance and enhancement of our trading relationship with all our trading partners."

Mr. McFadden: I think that is with the United States because it is what this report is about.

Mr. Ashe: Yes. I think it is better the way it was. I do not mind changing the words from "market share" because it says the same thing.

Mr. Chairman: Okay. "Maintenance and enhancement of our relationship with the United States and other trading partners."

Mr. Morin-Strom: "Of our trading relationship."

Mr. Chairman: "Trading relationship with the United States and other trading partners."

Mr. Morin-Strom: "All."

Mr. Chairman: Is that all right? The only thing you are changing is "market share" to "trading relationship."

Mr. Morin-Strom: Do you want to put "all relationships?"

Mr. Chairman: "Maintenance and enhancement of our trading relationship with the United States and other trading partners." Okay?

Is the next paragraph all right?

Mr. Morin-Strom: It sounds fine.

Mr. Chairman: Okay. How will we handle corrections?

Mr. Ashe: I think the only issue right now is how that 75-60 ends up being clarified.

Mr. Chairman: That was the one thing we left with Mr. McLellan. Mr. Carrozza did point out to me at that time that it would be nice if we could resolve that within a short time frame.

Mr. Ashe: That is something that maybe could be checked out through the subcommittee. Maybe just even by telephone through the chairman. I do not think it is necessary to leave it till next week, in my view. It could be handled that way.

Mr. Morin-Strom: We might not be here next week.

Mr. Ashe: I am sure we will be here in the legislative sense, but we may not be allowed to sit.

Mr. Morin-Strom: Any time I have seen us adjourn, we always end up coming to Wednesday and saying: "We do not want to sit tomorrow. Let us get everything done today and finish today."

Mr. Chairman: That is possible.

Mr. Morin-STrom: That has happened every December and July or whatever.

Mr. Chairman: We may not have a meeting next week, we are saying. What if Mr. McLellan checked this out in the next several hours? I do not think it is going to take a long time. I think we have the material ourselves. I think I have seen it.

Mr. Mackenzie: Check it out with the steering committee--

Mr. Chairman: We could have either a meeting or just casual conversations.

Mr. Ashe: It is back to the steering committee members.

Mr. Chairman: Karl, David or George, whichever one: David and Ray.

Interjection: Rick is the guy.

Mr. Chairman: Rick has not been part of this discussion.

Mr. Ashe: There is no use having Rick, because he was not here. Hopefully, it should be completed and tabled before the House rises.

Mr. Chairman: Yes. If we can agree on that, then we have our report.

Mr. Ashe: We should be able to table it early in the week.

Mr. Chairman: Is that all right?

Mr. Morin-Strom: Does the report include a recommendation that we--

Mr. Ashe: Beg leave to sit again?

Mr. Morin-Strom: Yes.

Mr. Ashe: It does indirectly, but that is all--

Mr. Chairman: I think we have a continuing mandate.

Mr. Ashe: That has already been approved in our budget.

Mr. Chairman: In fact, we have a budget to go to Washington in September.

Mr. Ashe: Don't pack your bags yet, though.

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Mr. Chairman: All right. What I am looking for now is a motion.

Mr. Ashe moves that the report in its entirety be passed with the caveat that the subcommittee will consider an amendment to the last paragraph on page 8 and will endorse that amendment on behalf of the whole committee, at which time the report in total will be considered passed.

Motion agreed to.

Mr. Chairman: Hopefully, if that happens this afternoon, it may be the case that it will happen after reports from committees.

Clerk of the Committee: It will not be done today.

Mr. Chairman: All right. So hopefully I will be able to table this report on Monday or as soon as possible, bearing in mind what sometimes happens in the last week.

Mr. Haggerty: As soon as possible if not sooner.

Mr. McLellan: Following the last day, I went back and made suggestions underlined in double lines. The one thing I did do--and the committee can just ignore it--is on the new page 3, under "Major Issues," we went through and basically agreed with all the items on page 3 with the exception of the last item, trade remedy laws. We had discussed subsidies through to customs procedures, customs procedures being the second from the last.

I felt personally that the issues were not as comprehensive as they could have been. As I say, we can just ignore it.

On the top of page 4 you can see that I have added about six or eight. If we start discussing those, it could open up another issue with us and take quite some time. We can either ignore those completely or we can read through them quickly and agree on them.

Mr. McFadden: All the ones listed on page 4?

Mr. McLellan: Yes. After our discussion last week, I thought--we discussed the subsidies, dispute settlement, foreign investment, services trade, tariffs, custom procedures. I felt after rereading it last week that perhaps we should add some more and talk about those. As I say, we did not agree to them; but I put them in anyway. If you want to delete them, we can just cross them off now.

Mr. Chairman: Okay. Thank you for bringing that to our attention. In other words, basically, on looking this over, you--

Mr. Mackenzie: Added to the glossary.

Mr. Chairman: You have added, and it is basically the glossary.

Mr. McLellan: If I could read through the principal ones?

Mr. Chairman: Yes, go ahead.

Mr. McLellan: We agreed as far as custom procedures. Then I went on from that, and as I say, the wording on this is just reflecting bullet point items. "Trade remedy laws: changes sought by Canada against the American trade remedy laws, for example, immunity from United States rules against unfair dumping." This list was to be primarily to the bullet point of subjects we touched upon.

Then we went on to the top of page 4: "Procurement: Canada's and the United States' mutual interests in each others' government purchasing programs."

Then we talk about investment rules: "Investment Rules: the United States' pursuit of liberalized investment rules in Canada leading to a more open treatment of investment policy;

"Auto pact: the long-term viability of this agreement against pressures from foreign car manufacturers;

"Canadian Culture: the protection of the cultural sector against exemptions pursued by the United States;

"Intellectual property: the United States' support for the protection of intellectual property, copyrights and patents;

"Agriculture: a decision vis-à-vis the need to retain the role of supportive marketing boards in the agricultural sector; and

"Natural Resources: the United States' interest in enhancing access to Canadian natural resources.

"More generally the 'national treatment' concept being discussed would mean that commmerce between the two countries would be carried out on the same terms as commerce within each country."

As I say, we are not endorsing any of these, we are just saying this may be an accurate reflection of things we heard being said in those meetings.

Mr. Mackenzie: I have no difficulty with the addition of those. However, Karl raised one minor point on the very first one, the trade remedy laws. It was his observation that concerns were as large, or more, with the countervail as they were with unfair dumping, and that that should somehow or other be added to that one. Other than that, we have no difficulty.

Mr. McFadden: I agree with you. It should be against dumping and countervail.

Mr. Chairman: I would put countervail first, would you not?

Mr. Mackenzie: Yes.

Mr. Ashe: Other than that, I think it defines this well.

Mr. McFadden: If I could suggest, why do you not just take out "unfair"? You could say "countervail and dumping." Dumping is considered by definition to be unfair, just like killing somebody.

Mr. Chairman: Otherwise, American dumping is fair. Right, "against countervail and dumping." Other than that, it is perfect.

Mr. McLellan: Then on page 5, where we have the double underline, Karl wanted the Ontario concern at the top mentioned there. The number 1 observation would change, in a minor way, 2 and 3; then number 5, we had trade irritants in there.

Then on page 7, we wanted agricultural and multilateral forum. Number 7 was changed in minor way. On number 9, I explained general grievance on tariffs and trades in full forum.

I think that is pretty well it.

Mr. McFadden: The only thing we might note under agriculture is that in the discussions we had with Dan Glickman, who is our major agricultural person we saw when we were down there, we only talked about marketing boards, but I suggest the other thing is subsidy levels. That surely is the biggest single problem. I know we all approach it differently, but our problem right now is the American subsidy levels hammering our grain producers. This is not just in the west, but it is affecting us here--the corn and so on. I would say something just to marketing boards on social subsidy levels, on a decision vis-à-vis the need to retain--

Mr. McLellan: Or it could be that we can say "agriculture, a decision vis-à-vis subsidies and the need to retain the role of support of marketing boards in agriculture"--

Mr. McFadden: "Vis-à-vis the level of subsidies and the need," etc. There is probably an awareness of some subsidy. The question is whether you are going to go crazy.

Mr. McLellan: "A decision vis-à-vis the level of subsidies and the need to retain them." Okay?

Mr. Chairman: Okay. Anything else? Was that motion passed? So we have ourselves a report. It was well done. That is some job, putting together a lot of diverse thoughts.

Before you run off, since there is no particular meat on our plate right now--unless we want to do some--I would suggest to the committee that we propose the meeting be scheduled as usual. We may have some wish to have a quick discussion of the tax reform plan.

Mr. Haggerty: Who is going to Uruguay? Is that not--

Mr. Chairman: No, Washington. A time when we want to go to Washington--early, middle, or late September?

Mr. Ashe: Probably about the middle of the campaign. Let us put it that way.

Mr. Chairman: When is that? Early September?

Clerk of the Committee: I understand what you are saying, but just on the assumption that, let us say, there is not going to be anything.

Mr. Chairman: So we will not be faulting you for not having reservations and stuff. I see.

Mr. Ashe: I presume this would happen anyway, but I think you have to tie any tentative commitments that you make to the understanding that they can be cancelled without penalty.

Mr. Chairman: Oh, yes. When does the Congress sit?

Mr. McFadden: It sits until the end of October.

Mr. Chairman: It sit rights through all of September. That is not a problem. Probably, the sooner the better.

Mr. McFadden: I suggest that it would make sense to go after October 5, because if there is no agreement on anything at all then it would be worth while going in October to get an assessment of where things are with all this omnibus trade legislation and to try to get some feel for that.

If there is an accord, then it would be worth while to go down there around that time to see what the mood is about that and all the details. Also, undoubtedly, this trade legislation is going to be either passed or close to it by then.

Mr. Haggerty: What about the first week or second week in October?

Mr.Fadden: I think it also would have reached a crescendo in early October. It makes sense that we go in October, because September in many ways would be--all we will hear is everybody saying, "Well, we are waiting until October to see what happens with the trade legislation." It makes sense to go then.

Mr. Mackenzie: What about the third week of October?

Mr. Chairman: The House does not normally come back until the middle of October.

Mr. Ashe: It has to be earlier than this.

Mr. Chairman: Why does it have to be earlier?

Mr. Ashe: It has to be before the House comes back--that is all I am saying--if it comes back.

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Mr. Chairman: All right, yes; if the House comes back--as close as possible to the day the House comes back, which is maybe the second week of October. How is that?

Mr. Ashe: Has a date been announced about when it would resume, if it does?

Clerk of the Committee: No. That will be done next week.

Mr. Chairman: No. That will not be done until the very last day, I would think. Why do we not shoot for October 5, the very date?

Mr. McFadden: That would be great.

Mr. Chairman: Yes, and we will get media attention again.

Mr. Ashe: The fifth is a Monday. Do not forget, by the way, if you plan it for October 5, I want you to plan for a birthday party because that is my birthday.

Mr. Chairman: It is also Ray's birthday.

Mr. McLennan: It is my birthday. We will celebrate together.

Mr. Ashe: Good. We will go rowdy together in Washington.

Mr. Haggerty: Make sure, Franco, all the luggage gets off at the right time.

Mr. McLellan: The federal government put out a video, Free Trade: The Movie kind of thing--

Mr. Chairman: The 12-minute one for $12 million?

Mr. Ashe: Is it X-rated or R-rated?

Mr. McLellan: I have a copy of that, if anybody wants to see it; it is a short thing. Also, the Canadian Labour Congress has one that is available. If anybody wants to see them, we could pull those together and sit down for 20 minutes.

Mr. Haggerty: Why not invite every member?

Mr. Chairman: Would you like to do that next week?

Mr. McLellan: I can get the CLC one. I have the federal one right now. As I say, they are pretty short.

Mr. Haggerty: Try to invite any member in the House who has time and wants to come in and see it.

Mr. Chairman: Should we do that next week? We could always pre-empt it if there is an urgent tax reform issue. Okay?

Mr. McFadden: So we will plan, then, our October visit?

Mr. Chairman: October 5.

The committee adjourned at 11:12 a.m.

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

FEDERAL TAX REFORM PROPOSALS

THURSDAY, JUNE 25, 1987

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

CHAIRMAN: Cooke, D. R. (Kitchener L)
VICE-CHAIRMAN: Ferraro, R. E. (Wellington South L)
Ashe, G. L. (Durham West PC)
Cordiano, J. (Downsview L)
Haggerty, R. (Erie L)
Mackenzie, R. W. (Hamilton East NDP)
McFadden, D. J. (Eglinton PC)
Morin-Strom, K. (Sault Ste. Marie NDP)
Ramsay, D. (Timiskaming L)
Stephenson, B. M. (York Mills PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:
Knight, D. S. (Halton-Burlington L) for Mr. Cordiano
Partington, P. (Brock PC) for Miss Stephenson

Clerk: Carrozza, F.

Staff:
McLellan, R., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Treasury and Economics:
Sweeting, T., Director, Taxation Policy Branch
Love, P., Economist, Corporation Taxes, Taxation Policy Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Thursday, June 25, 1987

The committee met at 10:05 a.m. in committee room 1.

ORGANIZATION

Mr. Chairman: I see a quorum. Perhaps we could get started this morning because we have a busy morning, in view of the presentation of Mr. Wilson in particular.

As members know, we have the possibility of sitting as a committee prior to the Legislature sitting again in the fall. We have already indicated in previous discussion that we wish to sit during the week of October 5, during which time we would like to be transforming ourselves to Washington, DC, so that we can resolve the trade fiascos.

The other times in which we can sit basically start Labour Day, or the day afterward, September 1. It is expected that the House will resume on October 14. The Treasurer (Mr. Nixon), of course, has made comment in his statement to the Legislature on June 22, which I think all members of the committee were expecting to do whether or not he made these comments, but he indicated his desire that our committee have full hearings on the issue of tax reform. The question that needs to be answered is: Do we wish to sit all of the time starting September 2, which is a Wednesday, through to October 9, which is a Friday? That would include our trip to Washington. I would presume there is no reason why we would not ask for all that time, and then if we do not need it or if there is some reason that we are not going to use it, we can make both of those decisions later on.

Mr. McFadden: I take it, Mr. Chairman, that you are suggesting that we have a trade-related visit to Washington that would be in the latter part of that period--in other words, after October 5, around that period--so that the hearings on tax reform would likely be in the September period. Is that what you are thinking?

Mr. Chairman: Yes. I think the motion to that effect has been passed. I am not sure whether you were present.

Mr. McFadden: No, I was here. I just wanted to be sure. But we had not talked about tax reform hearings as well.

Mr. Chairman: No.

Mr. McFadden: All we talked about last time was going down to visit the congressional people and so on.

Mr. Chairman: That is right. The chair suggested that the timing of that is a little more exacting and, in so far as tax reform is concerned, we could work around it.

Mr. McFadden: I do not think we will have any objections to sitting in September on tax reforms on the understanding that in early October we would do the second part of our agenda item, which would be the review of whatever trade initiative has taken place by then, one way or the other, where there is an accord, to look at the legislation being passed down there.

I would think it is a two-pronged thing. I would think we would support September to do the review on tax.

Mr. Morin-Strom: I do not know why we are planning the specific timing of the trip already. The other thing is, I cannot imagine that we have to meet for four or five weeks or whatever for tax reform. I do not know of anything else that might be on our agenda, so I do not see a need to schedule that big a block of time. I think we should be more specific and pick two specific weeks or whatever and know when it is going to be.

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Mr. McFadden: I think, though, Mr. Morin-Strom, if you do not request time around here, you do not get any time, as you know.

Mr. Morin-Strom: No. Request two weeks; I do not see the need for a whole month.

Mr. Chairman: If you request two weeks, you are not necessarily going to get two weeks.

Mr. McFadden: Unless we are going to sit five days a week, I would think it would be better to request, say, three weeks. It would allow us perhaps a little more time with each witness. One of the things we ran into with the budget hearings was that in the case of some very good witnesses, we were really being cut off because we could not hear from them. All the members of the committee were being cut off in their questioning.

I would like to suggest that, particularly on a topic such as this, where most if not all members of this committee are not experts on tax policy, it would be useful to have a group of knowledgeable witnesses here who could spend enough time to give us an adequate review of impacts and so on. It would allow members of this committee as well to ask an adequate number of questions so they are clear on it.

I think one or two weeks are not likely to be adequate, given the number of implications here of what is going on. I assume we are not just looking at the federal situation and what effect that will have on the federal government. What we are trying to get an idea on is federal tax reform, how it would impact on Ontario and appropriate provincial responses. That, it seems to me, is not something we are going to do in a week or two; I would think we need at least three weeks to do a thing like that, if not six months. I hardly think three weeks is an excessive time period for those kinds of matters.

Mr. Haggerty: To establish our priorities in this particular area, I would be looking at free trade more than tax reform, particularly in Canada, because I think our key issue right now is free trade. We as a committee should be down in Washington as much as possible to keep well informed on what procedures are going. If we get into this area of free trade, as indicated by our American counterparts, maybe our whole tax structure in Canada will be changed to blend in with that legislation. You may not be aware of it, but there is some consideration in this area by experts that that will come about.

I would suggest free trade. If we have to spend two weeks down there, I would suggest that is the route this committee should go.

Mr. Chairman: The committee might have a different view after this morning's presentation. Perhaps we should have held this until the end; I do

not know. We have agreed that we want to go to Washington for one week, and you are suggesting that maybe we should take a second week in Washington?

Mr. Haggerty: I am suggesting that we can work in tax reform, as indicated here in the federal proposal, when the House is sitting, but you cannot take the time away from the Legislature to go down to Washington.

Mr. Chairman: We do not always get the time we would like when the House is sitting, though.

Mr. Haggerty: I am sure you can work it in.

Mr. Chairman: I would like soon to hear a motion to the effect that we ask for some period of time for both of these matters in the fall.

Mr. Morin-Strom: I like Mr. Haggerty's suggestion. However, I would not focus just on going to Washington. I think we should perhaps be looking at time for hearings on free trade and allowing witnesses to come before us with their views, given the currency of the issue at that time. If we were to agree that we would set aside the time for hearing witnesses for perhaps a couple of weeks in September, then I certainly would push for as many weeks as we could get, given the urgency and the timing of that issue in late September.

Mr. Chairman: Could we have a motion, then, maybe for a number of weeks, without necessarily apportioning it at this time? The House leaders do not really concern themselves with what we are doing; they just have to concern themselves with giving us time.

Mr. McFadden moves that the committee request the time between Labour Day and the resumption of this session.

That is four weeks out of about six, which is not in the least--

Mr. McFadden: I could explain it.

Mr. Chairman: No. I am just telling you that I have a little bit of a calendar, frankly.

Mr. McFadden: How does that relate to other things that are going on?

Mr. Chairman: That is fine.

Mr. Haggerty: Before, we would not have had to have any debate on it.

Clerk of the Committee: No. My yellow marks here are for my other commitment, the standing committee on social development. It is only for this.

Mr. Haggerty: Yes, okay.

Clerk of the Committee: My red marking is the motion moved last week concerning the trip to Washington. It was specifically that we go there on the fifth, because that is one crunch time for the meetings.

My understanding is that numbers of committees are requesting the first two weeks. This time there are six committee meetings in the first two weeks of September. If I may suggest for your consideration to request beginning the week of the 14th, the week of the 21st, the week of the 28th and the week of the fifth. That is four weeks there. My understanding is also that there is the possibility that we will be back in the Legislature on October 13 or 14.

Mr. McFadden: Do you want us to request specific time?

Clerk of the Committee: You will have to request it, yes.

Mr. McFadden: Do we have to ask for specific time?

Interjection: We are requesting four weeks.

Clerk of the Committee: If you do not request specific time, then you will receive what the government House leader wishes to give you.

Mr. McFadden: Then I will move for those four weeks.

Mr. Chairman: The four weeks starting Monday, September 14.

Mr. McFadden: Yes.

Mr. Chairman: It is not that we have any particular concerns as to which four weeks we get, other than the week of October 5.

Clerk of the Committee: Yes. I will follow the motion up with a letter to the government House leader specifically saying what we are doing and the weeks we would prefer, I hope, as soon as we finish today.

Mr. Chairman: Perhaps the letter can indicate that we have asked for those four weeks because we understand that it is the easiest for them. The one week we really would like is October 5, but the other three weeks could occur any time in that time period.

Clerk of the Committee: Yes.

Mr. Haggerty: I just want some information. Are there any other committees set up within the other provinces, similar to this committee, dealing with free trade?

Mr. Chairman: There was a committee in Saskatchewan that met for a couple of weeks before the provincial election that did not get into it nearly as strenuously as we did. I have not heard of any other provinces looking at it. Have you, Mr. Ferraro?

Mr. Ferraro: No.

Mr. Haggerty: I was just wondering. Maybe we should be sending the information we get to these other provinces and let them be aware of what we are doing.

Mr. Chairman: We sent our final report to other legislatures, I think.

Mr. Ferraro: I just want to get clarification here. Much to the chagrin of some of the members on the committee, perhaps, I am not overly enthused about going back go Washington. I quite frankly cannot see a lot of merit, but I will not prolong that.

My understanding of the motion is that we are asking for four weeks of meeting time, with conceivably one week in Washington.

Clerk of the Committee: Yes.

Mr. Chairman: Any other discussion? Are you ready to vote? All in favour? Carried unanimously.

Motion agreed to.

FEDERAL TAX REFORM PROPOSALS

Mr. Chairman: First of all, you have packages in front of you that I guess most of you have opened. This morning, to discuss tax reform with us, we have Tom Sweeting, who is the director of the taxation policy branch at the Ministry of Treasury and Economics. Mr. Sweeting has prepared a document. Do we have copies of this? Yes.

He has suggested that he run through this document using these point forms to indicate his own general review of the Wilson paper. That would take him about 45 minutes. He has invited us to interrupt where we feel it is pertinent, and I imagine if that occurs, it will take up the whole morning. It is a general overview of the paper, and I think that is exactly what we need to start with.

1020

Mr. Ferraro: Notwithstanding Mr. Sweeting's invitation, and with great respect to committee members, because of time constraints I think it would be more appropriate if Mr. Sweeting went through it first and then we asked questions at the end, myself included. We have been known to take too damn much time and we never get to the point.

Mr. Chairman: If all members of the committee feel that way, then just hold yourselves, make little notes and we will ask questions later.

TOM SWEETING

Mr. Sweeting: Before I begin, the package you have in front of you basically has three pieces to it. There is a slide show, if we could call it that--a series of bullet points that the chairman referred to. There are two other pieces: one I call a primer and one I call a fact sheet. They all basically do the same thing: They all basically summarize what Treasury sees has happened with Mr. Wilson's white paper that he introduced on June 18. I invite you to look through those other ones. If there were things in the paper that were not quite understandable or if you have not had an opportunity to pay as much attention to the tax reform as you might have liked, maybe these will be helpful in giving you a good feel for the exercise.

As the chairman said, this is Treasury's perspective on what Mr. Wilson did. It is certainly not an assessment; it is merely a reporting of the measures he proposed.

Tax reform, from our perspective, is basically about three things. These are in no particular order. It is about rebalancing the tax system by shifting some of the money that is currently raised through the personal income tax to the sales tax and the corporate income tax. It is about the shift in the way that money is raised from a system of high rates and substantial preferences to one with low rates and more modest preferences. It is all about having a tax system that is capable of raising the money that may be deemed to be sufficient to raise in the future for fiscal needs.

The federal government had four criteria that we think were particularly relevant in designing the proposals. First, there had to be an acceptable distribution of tax burdens and tax savings thoughout the income ranges. It was necessary that the result of reform feature a solid number of people who gain to see benefits as a result of reform.

The reform was designed to be revenue neutral in the first year; it was not to raise substantial additional money. The phrase that is used is now "deficit neutral" as opposed to "revenue neutral." I am not quite sure what that difference is, but I guess it is because it allows for the fact that the feds have to make transfer payment changes as a result of reform and that sort of thing. But "deficit neutral" is a phrase and, as in the United States, it appears to be something that is looked at over five years. So there are minor variations from year to year, but essentially the objective is, five years out, not to have raised more money from the tax system than would have been otherwise raised.

Of course, an important feature of a principle guiding reform was to have a tax system that was competitive with that of the US. That is primarily an issue of rates and keeping rates in line with what is the case in the US. A principle of reform or a guidepost for reform was to ensure that fair shares were better represented, that people, corporations that were able to avoid paying tax in the past would be brought to the tax base. That is particularly evident in the changes that they made on the corporate side.

The process of reform is essentially a two-phase exercise. What you have now is CIT and PIT reform, and sales tax reform in the future. The PIT, which is personal income tax, and CIT, which is corporate income tax, reforms start next year. In our view, the CIT reform is basically a continuation of the thrust that was brought forward in 1985 in the federal budget at that time. There are some changes and additions to the original strategy, but mostly you are talking about staying in line with what they had planned on doing anyway. The original reform contemplated lowering rates and broadening bases on the corporate side as a basic feature of federal tax policy.

The PIT is relatively new in the scheme of federal reform plans, and the introduction of that--those changes are effective on January 1, 1988--effectively shifts about $2 billion from the existing personal income tax system to other tax sources. Because the changes to the corporate income tax are not sufficient to pay for the reductions in the personal income tax and other expenses that reform has forced on the federal government, it has introduced some interim federal sales tax cuts. I will describe all of these measures in detail in a moment. Suffice to say they have taken the existing base and pushed it a little more to get a revenue out of the consumption side to finance personal income tax reductions.

The final phase of tax reform would be broad-based sales taxes. There is no timetable for this replacement of federal sales tax. Essentially, if you look at what was originally contemplated, it was that a broad-based sales tax at the federal level would allow additional personal income tax cuts, would allow them to repeal the personal and corporate income tax surtax and would also finance a substantial sales tax credit, which would be available for low- and middle-income families to deflect the burden that sales taxes have at those income levels.

Turning to personal income tax reform, the major feature of personal income tax reform, I suppose, is the reduction in the number of rates in the rate schedule from 10 to three. As you see, the rates will be 17 per cent, 26

per cent and 29 per cent, with the bottom rate applicable on taxable income up to $27,500, the middle rate applicable from $27,500 to $55,000 of taxable income and, beyond that, the top marginal rate in the federal schedule will be 29 per cent. As I said before, this involves a $2-billion federal cut in taxes.

The other big feature of personal income reform is the conversion of a number of exemptions and deductions to credits. What this basically means is that under the current system, exemptions and deductions were available to recognize differences in tax-paying circumstance. An exemption or a deduction is deducted from your income before you calculate taxable income. Once taxable income is calculated, you apply the tax to that.

What they have done is replaced those exemptions and deductions with a system of credits. A particular deduction will now be worth a flat amount. It will then apply after taxes are calculated.

If you look at the two systems, under the existing system you would calculate your income and exemptions, such things as personal deductions, deductions for children, deductions for tuition expenses; there is a broad variety of exemptions and deductions that are available. When you have deducted all those things, you get taxable income. You apply the rate schedule to that and you get the tax. Under the new system, you will calculate your income. There will be a few things that will be deductible to calculate taxable income. Taxable income will be a much bigger number now than it was previously, even with no change in income. You will then calculate tax using this three-rate schedule and from that you will deduct the tax credits.

In making that kind of change, essentially what they have done is removed the fact that higher-income people benefit more from exemptions. They have neutralized the way the rate schedule impacts on the value of deductions or credits. Essentially, everyone gets the same value. The personal exemption is now a credit of $1,020. That means that everyone gets to deduct up to $1,020 off their tax. If you do not have sufficient tax to use all of the credit, it is not refundable, but essentially it will move you to zero. Under the previous system, a $4,220 exemption, with the marginal rate structure we have, was worth anywhere from a few hundred dollars to over $2,000, depending upon how much income you had. This attempts to remove that bias in the system, in terms of the provision of relief for recognition of different circumstances.

The paper in front of you illustrates what the numbers are. There is a number more changes; those are strictly illustrative. Essentially, most of the exemptions are converted to a credit at a rate of 17 per cent or greater. All that means is that low-income people are more or less protected by the credit system. Specific attention has been paid to making sure that the shift from exemptions to credits is not onerous at the low end of the income scale.

Another significant change is the change in the federal capital gains exemption, which will now be capped at $100,000 instead of $500,000. In our view, this is something that, as Ontario has noted a number of times, is inconsistent with a fair tax system. Indeed, Mr. Wilson has made a major step in that area. The rate at which capital gains will be included in income will also be increased. Currently, half your capital gain is added to your income for purposes of calculating taxable income. That will become three quarters under the new system.

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Essentially, what they have done is they have ensured that the absolute

level of tax paid on a taxable gain is the same in the system before and after reform. Those people who are reporting capital gains do not get the benefit of lower marginal rates. In fact, their tax burden remains relatively the same.

He has phased in his registered retirement pension plan and registered retirement savings plan enrichments over long periods of time. He has eliminated the $1,000 interest and dividend deduction. However, it appears as though the basic personal credits, and recognition of family circumstances, have been adjusted upwards somewhat to make sure that they take into account the fact that things like the employment expense allowance and the $1,000 interest dividend deduction, which have disappeared, have a fair impact across the income scale. A number of other items that are deductions have become credits.

Phase 2: Mr. Wilson has indicated there will be additional personal income tax cuts if and when sales tax reform succeeds--an interesting choice of words--when reform is in place. Mr. Wilson did not discuss what those additional PIT cuts would be, I do not believe, but our view is that the kind of thing that would be consistent with what seemed to be the original intentions of the federal government would be a widening of the brackets in the rate schedule, so that higher levels of taxable income carry lower marginal rates. Effectively, more breaks for the middle class would be one way to characterize that. As we said, the surtaxes would be repealed and, altogether, he is probably talking another $1 billion. You would have a total shift of $3 billion, in that range, from the personal income tax to other taxes.

The other feature would be a very substantial tax credit for low- and middle-income families that would accompany the introduction of tax reform. As I say, those are the kinds of things that we think would be consistent with where the reform exercise seems to have originated.

Corporate income tax reform: The key aspect of CIT reform, in our view, is that this reform is an exercise, a continuation of what was already happening. That is important probably because, regardless of what happens to PIT and sales tax reform, CIT reform is likely to continue and be put in place. The main reason for that is because there is a very substantial concern on the part of federal officials that there is a very big risk of leaking tax revenue from Canada to the US.

Essentially, what that means is, because of the rate spreads that would otherwise exist between Canada, including the provinces, and the US, including the states, on the corporate income tax side, the potential is there for corporations in the short term to alter the way they calculate various features of taxable income and change the location of where they borrow.

There are a number of ways whereby they effectively shift profits out of one jurisdiction and into another, all totally legal and reasonable and that sort of thing. When the rate spread is sufficient, you have a risk that, even though the activity takes place here, the income is not reported here for tax purposes, and so your taxes go down without any real change in activity. In the long term, the risk is a rate spread would be sufficient to cause investment to flow to another location over Ontario. That concern is quite substantial on the part of federal government. It appears to have provided a considerable momentum for the corporation tax portion of tax reform.

The corporate tax reform features, in response to that, substantial reductions in corporate tax rates. The current rate is going from 36 per cent

down to 28 per cent. The manufacturing and processing rate is proposed from 30 per cent down to 23 per cent. Small business rates will decline from 15 per cent to 12 per cent, although they have raised the rate on small manufacturing from 10 per cent to 12 per cent, so there will be only one rate of tax on small businesses.

These rate reductions are funded in three particular ways. They are funded by a base-broadening exercise, in general terms, which substantially means they are funded by a change in the depreciation schedules for tax purposes. Featuring prominently in that is a reduction in what is called the fast write-offs, for manufacturing and processing equipment in particular. Those write-offs essentially allow the corporation to take its investment into the calculation of taxable income in three years, regardless of the length of time in which the equipment actually wore down. That has been in place in our system for a number of years. It is now going to be stretched so that it is four years of declining balance.

Without getting too technical, I will dwell on that for a minute so that you will understand it. The system now basically says that if you invest in a machine, you can write off 25 per cent in the first year, 50 per cent in the second year and 25 per cent in the third year.

We will say, in the future, if you invest in a machine, you can write off 25 per cent in the first year, 25 per cent of 75 per cent in the second year and 25 per cent of 57 per cent, however the number is. It is a declining balance system, so it actually goes ad infinitum. Implicitly, it means about 30 per cent is left at the end of four years, is that right?

Interjection: Yes.

Mr. Sweeting: About 30 per cent of the amount you invested would not have been written off at the end of the four-year system. It is a significant difference from the existing system, even though three years to four years may not appear to be that much.

They also got money for rate reduction by moving on specific sectors where they felt the ongoing measurement of the ability to pay tax did not generate sufficient tax burdens, three sectors in particular, insurance, banks and real estate, and specific changes were made in those sectors to bring more of the income of profits they earn into tax and force their tax burdens up.

The third change, which is not mentioned here, is that they also took a number of steps on what is called the anti-avoidance front, whereby they tightened the ability of firms to use particular kinds of after-tax financing mechanisms and generate reduced tax positions because of the way financial arrangements are set up.

Those three things together are expected to generate, by maturity, about another $1.2 billion more after the rate cuts have taken place.

It is important to note that pollution control and energy conservation, which were potential targets because they are fast write-offs as well, were not affected by reform. And, more or less, it appears there is no significant change to the tax treatment of research and development.

Basically, those are the income tax changes. They are important from Ontario's perspective, aside from the appropriateness one sees in the changes the federal government has proposed, because our income taxes are linked closely with the federal income taxes.

The federal government reported in the white paper what the impact would be on the provinces. In reporting these numbers, they assumed there would be no changes to provincial rates and they assumed the corporate tax base would be paralleled. In other words, all the things the federal government does to expand the base that are part of the provincial base would be done by the provinces. This is strictly an exercise, something they did in order to try to give some idea of the magnitude of the impact on the provinces.

Looking at those numbers, and I emphasize these are federal numbers from the white paper, you can see that what basically happens is, first of all, we have a substantial and ongoing reduction in the personal income tax. Ontario's personal income tax is calculated as a percentage of the federal tax, so whatever happens to the federal tax, we mirror.

The fact that the federal tax is being reduced by $2 billion in phase 1, nationally, automatically translates into a slightly more than $400-million reduction in Ontario's personal income tax. Because we are in the tax collection agreement, that is the price that is paid for the federal government running our system. The federal government basically calls the shots, and we have a choice as to what our rate might be, but other than that, we automatically pick up what the feds did.

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Recognizing that is the case, there is an adjustment in EPF. That adjustment of just over $100 million a year occurs automatically, in recognition of the fact that the federal government has changed the yield of the system. Each per cent of tax levied will now be worth less than it was before because of the nature of the changes the feds have made. That means that adjustments occur in other ways.

Mr. Chairman: What is EPF?

Mr. Sweeting: Established programs financing: the agreement signed in 1977 between the provinces and the feds.

That helps to reduce the impact on the bottom line from Ontario's perspective.

It is a different story on the corporate side. On the corporate side, the assumption on the part of the feds is that we parallel the base and we do not change the rates. That means we pick up the growth in the base the federal government has built in through the various measures I just talked about but, because Ontario's rate stays unchanged whereas the federal rate falls, it is a substantial revenue bonus for Ontario under these assumptions.

That starts out at $165 million and grows to $612 million, according to the federal numbers. That growth is primarily due to the fact that the changes on the management and processing side are phased in. The rate drops only slightly and continues point by point through to 1991, I believe. Similarly, the change from the fast write-off of over three years to four years is something that does not occur right away. It drops to 40 per cent, then drops to 35 or 30 per cent, that sort of thing.

It is in the growth in the base that Ontario is gaining, according to the federal assumptions. It is something that comes in over time.

Perhaps recognizing--and maybe it is unfair to say that is why they did

it--but another feature of the federal package is a speedup in personal income taxes. That speedup affects the provinces in the first year, which means that what would otherwise be a significant reduction in provincial revenues becomes a small gain in provincial revenues. For the most part, bearing in mind that $18 million is a negative number but is certainly not a significant number in terms of the kinds of numbers we are talking about here, reform in this no-change scenario is basically a positive exercise for Ontario in that this revenue gains over time.

These numbers are on a calendar-year basis. That is important to emphasize. They have not been what we would call fiscalized yet and there could be some changes as a result of that. What they basically say, and forgive me if I am complex or if it is jargon, in respect of the 1988 tax year, and those words are important, Ontario would lose $411 million. That does not mean that is the year in which the money change affects the flows of money we get from the feds. Some of it happens that year and some of it happens the next year. For the most part, there is not a lot of difference on any cash-flow or fiscal-year basis on the personal income tax.

Similarly, on the corporate income tax side, it says, "In respect of the 1988 tax year, the impact of those changes on the corporations would be a gain of $165 million." That will flow in in various years; we are currently in the process of breaking that down and assigning it to years. It is possible that the nature of the federal changes would be such that the cash flow differences would be notable compared to these calendar positions. Suffice to say that the decisions made in terms of what it does to the bottom line really will have to be made in fiscal-year terms. That is something we have yet to work out but are in the process of doing.

The other point to note in the context of the impact of the federal changes is that the federal government seems to expect economic feedbacks that are positive as a result of reform. These do not feature in the numbers you see above you, which are, as I say, federal numbers, but they are built into its economic forecast, as far as we can tell, into its revenue forecast in general. It seems to be saying that because of these changes the economy will grow faster than it would before, and tax revenues, generally speaking, would be higher than if it had not made the changes, but that is not broken out in specific detail, at least not in what I have read.

The package of income tax changes: some of the price of the reduction in personal income tax is paid for through corporate tax, some is paid for through sales tax changes. Because it has decided not to move ahead, or it wishes to consult further on the issue of broad-based sales tax, it proposed interim changes to the federal sales tax. It is a moot point whether these are really reforms. The point is that they are there to raise money. The one of significance is the introduction of a telephone tax at the federal level, a tax on phone services other than local residential. That generates a substantial portion of the ongoing funds they need over the next five years to pay for the income tax changes.

There is also a onetime speed-up in FST--that is, federal sales tax--customs and excise duties of $1.6 billion, which is necessary basically to recognize the phased-in nature of the corporate tax changes and the fact that rates are dropping sharply at the start, but the base does grow. It only grows over time as they phase out the fast write-offs.

They have also proposed an enriched sales tax credit. That sales tax credit would go up by $20 per adult and $10 per child, essentially to try to

defray the impact of the telephone tax at the low end. In this sense, it is very consistent with how they propose approaching sales taxes on a broader scale.

The future sales tax reform proposes three possible ways for the federal government to engineer a broad-based sales or consumption tax. They have proposals which are federal-only taxes. One is called the "goods and services tax" and the other is called a "value added tax," and there is a proposal for a joint federal-provincial national sales tax.

The terminology may be a little bit confusing. Essentially, these are all the same tax. There is really no meaningful difference in impact between these three variants on the same theme. They are all broad-based, multi-staged value added taxes. There is a slight difference in calculation between the goods and services tax and the value added tax. Maybe I should not say "slight," because I am sure many would see it to be an important difference.

The goods and services tax calculates value added based on books of account, which essentially means that tax is included in the day-to-day pricing operation and in the day-to-day sales. At the end of an accounting period, by use of a formula, it is backed out using profits and cost. It is not something that is kept track of on a day-to-day basis. It is something that is calculated once at the end of an accounting period.

The value added tax, although it is the same tax, operates on what is called the credit invoice method, which basically means each invoice registers tax on that invoice and says, "As a result of this, there is this much tax in the payment." The taxes in both cases are on the seller of the good, not on the buyer of the good, and they basically are on only the portion of the value of the product that he himself has added to it.

The national sales tax is basically the same thing, credit invoice based, but provinces would no longer levy retail sales tax as we now know it. They would participate in a base that would be defined for federal purposes. There are a lot of things to look at there, and the feds have indicated that a number of discussions have to take place with the provinces. We expect to start on the discussions early in July, particularly in terms of the technical aspects of it. Suffice it to say that the provinces levy direct taxes only, multi-staged value added taxes or indirect taxes, so we will have to look at what sort of mechanisms are necessary in order for the provinces to have a tax consistent and co-ordinated with the federal tax, if indeed that is something that is seen by this province to be appropriate.

The other difference that is noteworthy between a books of account tax, a goods and services tax, which used to be called the BTT, or business transfer tax in terms of what you might have heard previously, and the value added tax is that the goods and services tax will not work very well with exemptions. It really requires one rate. In order to do the calculation in a simplified fashion on books of account, you cannot handle different rates on different products. Otherwise, the business will be keeping track of a number of different streams of income, which becomes as complicated as keeping track of invoices. Therefore, you are talking one rate.

If you are talking about a system that is going to have different rates or exemptions--the same thing applies for exemptions--you are really into the value-added mode of applying and calculating the tax as opposed to the goods and services tax.

As I said, there is a consultation process with no particular end set for that consultation process. I mentioned earlier that sales tax reform is expected to generate funds for moves on the personal income tax side, and there is a big sales tax credit that would be aimed at protecting low income people as a result of the introduction of a broad-based sales tax.

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That is essentially the overview of the form. Those are the kinds of things. I was a little bit faster than I said I was going to be. I am certainly willing to try to answer what questions I can. I have a number myself that I am asking people, but we will see what we can do.

Mr. McFadden: I thought your presentation was very understandable, and certainly the material you have given us is a very good summary. I have had a chance to review all this other material that you gave us. I guess all of us probably received that last week. This certainly helps a great deal. One of the points that has come up has been the question of whether or not food is going to wind up being taxed. This is an issue that people seem to be raising.

Offhand, I did not see any evidence for sure that food was going to be taxed. Is it your anticipation that there would, in fact, be some form of a sales tax or value-added tax on food--some new form of taxation in the food area--or is that just a question of conjecture which is subject to ongoing public consultation, comment and so on?

Mr. Sweeting: I would say that the latter is indeed the way to describe it. It is a subject of conjecture that is the subject of comment. Let us put it this way: in the proposals that the federal government put forward, it has got the mechanisms there to tax food simply if it so wishes, and it has the mechanisms there not to tax food if that is the appropriate course of action.

I do not know what the federal government's ultimate plans are and what it has in mind. Certainly, Mr. Wilson appears to be pointing out that significant sales tax credits are of substantial benefit to low income people, which is part of the argument that a system that taxes food that includes credits may, in fact, be a better distribution of the tax burden than a system that does not tax food and does not have credits in it.

That is something that economists look at and say, "Let us look at them." We draw the lines and we see where the burden is. Certainly, you can put together a package that has an increase in progressivity, if I can use that phrase. But that is something that economists will have a lot of fun with. I am not sure whether ministers of finance are able to base their decision strictly on what the economists tell them when it comes to tax on food. He could do either, and I do not know what he is going to do.

Mr. McFadden: The thrust, as I see it, is to try to get more money into the hands of people with modest incomes and to shift around the burden a bit so that the people in the high end will not necessarily have as many exemptions and loopholes as they once had. Would that be a fair summary of the thrust of the personal income tax part here?

I know that there is a general reduction of rates to bring us into line with what has happened in other countries and so on. But from the use of tax credits and things of that nature, as I would understand this, I gather the intent, at least, is to reduce loopholes and then to get more money into the

hands, hopefully, of people of modest incomes.

Mr. Sweeting: It is basically two things. One, it is to reduce the tax burden at the low end, and two, it is to shift the tax burden from wage earners to investment, people who have sources of investment. Those two things are what appear to be happening as a result of reform. Obviously, you can combine them and you can have low income people whose taxes go up and you can have high income people whose taxes go down. Essentially, you are correct in your assumption that overall they are trying to shift taxes from the low end towards the upper end, and then they are trying to shift it off of wage and salary income.

Mr. McFadden: Thank you.

Mr. Chairman: Mr. Ferraro and then Mr. Partington.

Mr. Ferraro: Tom, thank you for your presentation. It clarifies a few things. It also confuses me a little more on certain issues.

I am a little curious, and maybe you can give me your views on this: Obviously, a lot of the intent of the reform is to simplify things, switch the burden and to negate any exemptions for corporations. I am trying to figure out if there is any correlation or in fact why the federal government in one instance said corporations such as banks, insurance companies and real estate firms, now are going to get taxed more heavily, and in the other instance, for example, it took out specifics and said there is going to be a 10 per cent consumption tax put on long-distance phone calls and then also the cable TV rate is going to be increased.

If the logic--and I will assume this is logical--is that any increase, such as the consumption rate, is going to be passed on to the consumer anyway, why the hell did they not just tax the corporations? It would seem to me it would save a hell of a lot of paperwork. Am I out in left field? They did that for banks, insurance companies and real estate.

Mr. Sweeting: I am not sure I will give a very good answer to that question. I will try.

Mr. Ferraro: Is it a sensible question?

Mr. Sweeting: See by my answer if I understood completely what the question was. Essentially, the federal government made changes to its corporate tax base to try to get more taxes, first of all, and more taxes out of specific sectors where it felt that the burden of the tax was relatively light compared to what other sectors paid. As you referred to, banks, insurance and real estate were sectors targeted by the federal government and sectors where it made changes specifically to draw in more money than is currently the case.

The consumption tax changes are, first of all, proposed as interim measures. They are seen to be something that is being done now but in the context of an expectation of reform farther down the road. I guess it does mean they herald the kinds of things that would come in the future with a broad-based tax. Those changes were specific because they felt they could get the money. At this point in time, the money was necessary in order to make the package neutral. They apply to people on long-distance calls, but they apply primarily to business.

The question as to whether or not they should have just taxed business directly gets into the whole question of who pays taxes ultimately, in the end; another question that economists spend a lot of time thinking about. The assumption in the federal reform exercise appears to be that people pay the taxes in the end. They appear to assume pass-on would happen at all corporate levels, so the reason you would tax a particular activity of the corporation as opposed to income and that sort of thing has to do with the nature of the base, the ease of getting at it and calculating it, making sure--there are a lot of reasons you use consumption taxes and corporate taxes.

There is no one answer. I think it just reflects the nature of our system and the fact that changes are evolutionary, rarely revolutionary, building on what comes before. We have a system with a balance, and the feds want to tax more of the act of consuming something than of the act of earning something, whether that be earned for corporate purposes or whether it be earned for personal purposes. That seems to be part of what they are doing.

Mr. Ferraro: I do not know. I was thinking, if it is a consumption tax, obviously the consumer is going to pay for it. If on the one hand you are taxing certain corporations to a greater degree, which is fair, in order that they pay tax, and they have singled out certain sectors, it would appear to me that it would have been a hell of a lot simpler if they said Bell Canada, for example, is going to hit you with a quarter of one per cent on all long-distance charges, instead of having the consumer get nailed. Does that make sense? They are going to pass it on anyway.

Mr. Sweeting: Yes. I really do not think I can give you an answer to that question. That is a reasonable question, but off the top of my head I do not have the right answer to it. I think it is important to understand, to get back, that when you look at the issue of where we go if we want to get some more money--let us postulate that the next thing they want to do is get more money. Under the system they have designed, where would they go? It is going to be hard for them to go to corporate tax because of the leakage issue, at least, according to the view they seem to hold. If you move the rates up any more than where they are now on the corporate side, they feel you risk having profits go down to the United States. So you are really looking at a consumption base as the way you are going to do--

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Mr. Haggerty: Is it not a risk to the consumer, too?

Mr. Sweeting: Certainly. The exercise is about moving around who pays taxes but not reducing the overall tax burden, so somebody is going to be paying for this. As I said, my view is that the federal analysis on this consumption side is predicated on people paying consumption taxes in the end. Certainly, the whole value added approach is set up to credit corporations for the taxes they pay on their inputs. The reason you look at a broad-based, multi-stage tax is that it is seen to be an economically superior consumption tax to a single-stage retail tax, for example, or a single-stage wholesale tax or a manufacturer's tax, as they have now.

That is because it does not tax business inputs in the end. So that means that exports can leave this country without a tax component in it and effectively enter the country where they are sold on a tax-free basis and compete better in that country. It allows imports to be treated on a fairer basis. Most perceive that with respect to the existing federal tax, imports are relatively favourably placed compared to domestic products.

It stops cascading, which is another term we will hear a lot of throughout the debate on the phase-2 sales tax. It is essentially the fact that the corporations now have to pay tax on certain inputs. That tax then gets built up through markups and that sort of thing, gets taxed again in many cases, either by the feds or the provinces. So there is a tax-on-tax component to this kind of system. Multi-stage, value added taxes remove that and you get a very clean base.

But if you want to describe what that base is, it is a pure, individual consumption base. In other words, the final person who uses the product pays the tax under a broad-based system, whereas under this system, at least in a direct, upfront sense, corporations pay some of the sales tax. They absorb it. They are likely able to pass it on. In many cases, they do. But it is something that is paid: the corporations hand over the money and say: "There, you wanted 12 per cent on this particular thing. Here is the money." Under the new system, it would not do that. So consumption taxes are oriented at individuals.

Mr. Ferraro: Two questions and then I will quit. With regard to your "Impact of Federal Changes on Ontario Taxes" chart, can you explain to me--I think I have an idea--what the speedup on the personal income tax is? Is that the time of payment?

Mr. Sweeting: Yes. I have not got the details in front of me, but essentially it means that the amount of time that corporations get to have the money before it is submitted to the government is shorter. It is in their hands for less time.

Mr. Ferraro: That is what I thought. The question I have, with regard to corporate income tax, is the differentiation between 1988 and 1989. Why that big change?

Mr. Sweeting: It has to do with the way that the changes to the fast write-offs are phased in over time. I am not sure--

Mr. Love: There is a number of--

Mr. Chairman: Would you move up? Perhaps we will get your evidence on Hansard. Your name, sir?

Mr. Love: Paul Love.

Another factor is that some of what they call base-broadening, which just means that a higher percentage of the profits will be subject to tax, is phased in over a number of years. They really start to take effect for the 1989 taxation year. For instance, the base-broadening for real estate is phased in 20 per cent a year over a five-year period. So it means in 1989 it really starts to take hold. The same thing for the changes to the tax treatment of banks and for the tax treatment of insurance companies.

Mr. Sweeting: I also think a number of the measures on the corporate side are effective July 1, not January 1, so you sort of have a half year in 1988 for corporate purposes.

Mr. Ferraro: Okay. I was going to say, if you are taking only 20 per cent a year, then it should go up that degree almost every year.

Mr. Love: Yes, that would be the case with real estate, but in the

case of the banks and the insurance companies, it is a two-year phase-in.

Mr. Ferraro: The final question I have deals with sales tax reform. I get the impression that what we are really going to have is a broader base of commodities that we are going to get sales tax from. The idea of a national sales tax does not appear, at least from preliminary reports from people in the government, to be that exciting. I guess what I am asking you for is your gut opinion as to what we are going to end up with as far as sales tax reform is concerned, aside from a broader base. I think we are still going to be levying ours and they are going to be levying theirs.

Mr. Sweeting: I would not say I have an opinion on that. Just to clarify it, the national sales tax is a joint sales tax.

Mr. Ferraro: But they collect it.

Mr. Sweeting: They collect it for the two levels of government. Some people think national sales tax means a national retail sales tax. In fact, it is the terminology they are using to describe a joint federal-provincial system.

I do not have any particular view as to what is likely to happen. The federal government has made a very strong case on the faults of the existing tax, the manufacturer's sales tax. Certainly, there are ways for the provinces to co-operate with the federal government if that is desirable. That system could or could not have exemptions, different rates. The flexibility is there. It is really up to someone to assess the appropriateness of the system we need for the future.

Mr. Ferraro: Will this white paper, as presently proposed, make it easier for Joe Blow or Mary Smith to understand and indeed to file his or her income tax? Does it make the forms any simpler?

Mr. Sweeting: I have not seen the forms that result because of the changes. Intuitively, they would not seem to take great steps in terms of the simplicity of the tax system for the average person.

Mr. Partington: I have a question similar to Mr. Ferraro's with respect to the speedup. When you answered the question--the heading is "PIT Reform"--I thought you indicated that corporations would be paying tax quicker.

Mr. Sweeting: No. I am sorry if there was any confusion there. It is the personal income tax that is being speeded up, that paid by individuals.

Mr. Partington: How is it being speeded up?

Mr. Sweeting: I see where the confusion came from. Right now, when one receives a paycheque and tax is deducted from that paycheque, it is then remitted by the corporations at a certain point in the future. So, many weeks later, they owe that money to the federal government. What the feds have said is, "You have to give us that money, which you have already collected from people, earlier than you would have otherwise given it to us."

Mr. Haggerty: I want to follow up on what Mr. Ferraro started. I am concerned about the sales tax. It is going to relate to housing; there is no doubt about that. The increase is going to go up considerably. There is no number on the page, but under "Sales Tax Reform" is says, "It is the federal government's intention to replace the existing manufacturer's sales tax with a

new broad-based tax on goods and services."

I am looking at that word "services." I can see right now that a tax is going to be put on every parcel I have delivered here at Queen's Park or at my constituency office through one of the parcel people in the business, a courier service, just for delivering that, just like our increase in stamps for mailing. Everything will have a tax on it.

I look at the construction of a house and labour. The service will be taxed, if I may interpret that. There has been some suggestion that governments have looked at this area before. In other words, if you have an electrician come in to wire a house, if the job is going to cost you $6,000 or $7,000, there may be an eight per cent sales tax on service. That is about what you are paying on the goods that go into it.

To me, this pass-through is going to cause more damaging effects upon the economy than leaving the taxes as they are. I think that is the point Mr. Ferraro has made. Am I correct in my interpretation of that? When they talk about services, will that be labour?

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Mr. Sweeting: You are correct that a broad-based sales tax could indeed tax courier services. It would tax the labour component of the provision of a variety of services now. Most activities that take place in the economy, where some value is added, could conceivably be part of the tax base. I could not comment on whether that is a better system or a worse system in terms of our economy relative to the current system, the second part of your observation, but certainly you are correct that it will be that kind of a tax.

Mr. Haggerty: There is a sales tax now on certain components of building a house.

Mr. Sweeting: Building materials.

Mr. Haggerty: There is provincial sales tax also. Now you add the service tax and maybe 10 per cent on top of that. My God. They might as well put the price up and the person rent it and pay the rent on that.

In real estate, they are talking about increasing real estate taxes. Am I correct in that? Have I interpreted that--

Mr. Sweeting: Increasing taxes on real estate? Yes.

Mr. Haggerty: It says, "Interest cost deductibility will be limited." What does it mean by that?

Mr. Sweeting: Primarily, in the real estate sector that has to do with what is called soft costs. The building industry is able to deduct certain capital expenditures immediately as current expenditures. In other words, some of the things they do they are able to write off completely in the year they do them. They will now be forced to write those things off over time; depreciate them, as it were, as opposed to getting immediate write-offs. That is one of the elements of the impact of reform on real estate.

Mr. Haggerty: Have you ever made a study of this? Supposing I was to go out and buy a new home and I had to pay $700 or $800--it may be higher than that now--on mortgage payments per month. I am paying the tax on the interest

and I do not get any rebates back on that, but the industry does. It is a benefit to the financial institutions. On the American side, when they purchase a home there, the interest is deductible on that home.

Have you ever made a study to find out, on a home of $100,000 or something like that, the interest a person would pay? It is not the 25-year club; it is about the 40-year club now that you belong to before you get it paid off. You will probably be about 65 when you make the final instalment. Have you ever calculated the reinvestment of that money and what profit goes back into the industry?

Mr. Sweeting: No.

Mr. Haggerty: It would be fascinating if you had the time to work on that, I understand. They would probably be making about $2 million on the original investment by the purchaser of that property in that period of time.

Mr. Chairman: If there are no other questions, I would like to go back to some of the questions Mr. Ferraro raised.

When I first heard about tax reform, I really did not think a sales tax was going to be the major source of income in the future. When we talk about redistributing income, which is surely part and parcel of tax policy, and we talk about making a fair distribution of income to the middle-income earner and the low-income earner, I do not understand how we can continue to say that and yet assume that in the future we are going to have some form of sales tax as a larger component of the tax base. It is a regressive tax, is it not?

Mr. Sweeting: I do not think that a sales tax is proposed to be the major component; it is to be a larger component. Given traditional consumption patterns out of income, relative savings ratios, certainly the burden of a sales tax is something that bears more heavily at the lower end of the income scale than the upper end of the income scale. In that sense, it is indeed a regressive type of tax. Having recognized this, the federal government is proposing substantial credits in order to alleviate the impact at the lower end. I do not think there is anything wrong with what you said there.

Mr. Ferraro: Is the regressiveness of the sales tax, with the broadening of the base and so forth, offset by the fact that the consumer, the guy or gal who buys the commodity, in fact will have more money earlier?

Mr. Sweeting: The fact that they have more money does not change the impact of the sales tax on people. It depends on what they do.

Mr. Ferraro: I realize that. That is my question. It is more an economic one or social one, I suspect. If you have more disposable income in your hand at an earlier time or more frequently, does that compel you to spend more? In essence, if you are looking at the bottom line, how does it affect business and indeed how does it affect revenue accumulation?

Mr. Sweeting: Again, that is a question for economists to debate at some length: what happens to increases in take-home pay and the propensity to consume, and that sort of thing. The feds appear to have--I have not reviewed this in detail--

Mr. Ferraro: They seem to think it does.

Mr. Sweeting: They appear to assume some of both. One of the

economic features cited with more concentration on consumption taxes is that it can encourage people to save, because if you save your money as opposed to spending it, it does not attract tax. So that seems to be a positive economic feature in terms of generating savings.

Mr. Ferraro: They took away the $1,000 interest deduction, too, so maybe people will spend.

Mr. Sweeting: On the other hand, spending is the engine that generates economic growth and, for the last few years, it has been a dominant feature of our economic performance. I am not sure where that saws off. I guess I am saying, in typical economist fashion, that there are arguments on both sides. Whichever way you want to go can be rationalized and justified in terms of consumption versus saving.

Mr. Chairman: When you talk about a value added tax being paid by the seller, as opposed to the buyer, what is the economic difference?

Mr. Sweeting: There is no economic difference, assuming that it is passed on. Simply, the legal requirement that that tax be paid, the onus, is on the person who sells the product, not on the person who buys the product. In the current retail sales tax in Ontario, for example, it is you and I who are liable to pay the tax. With the federal proposal, you and I will not be liable for it, the person who sells that product to us will be liable to pay the value added tax.

I am sure there is a good reason why you would do it that way, but it escapes me at the moment. In practice, it is assumed to be basically the same impact. The seller of a product will sell it at a price that, under a value added tax, incorporates sufficient funds to pay the tax he will owe on it, so the consumer buys it; or else, under a goods and services base, he will show that and say, "If you are going to buy this product, I want X per cent more because that is what I owe the federal government for selling it."

Mr. Chairman: Would the province be included in a VAT?

Mr. Sweeting: Yes. The proposal for a national sales tax, which is a joint thing, is a VAT.

Mr. Chairman: The value added tax you are just describing, though, is not the same as a national sales tax.

Mr. Sweeting: Yes. All three proposals of the federal government are value added taxes, broad-based value added taxes. The difference between them essentially is that one is called a VAT, which is either a federal-only tax or a national sales tax, which means the provinces are in it, too. The other variant is a goods and services tax, which we used to know as a business transfer tax. They are all value added taxes. The only difference between the value added model and the goods and services model is how you calculate.

Mr. Chairman: The value added tax I am understanding sounds awfully indirect. That is to say the vendor pays it.

Mr. Sweeting: They are all indirect.

Mr. Chairman: But we do not have the right to collect indirect tax.

Mr. Sweeting: No, we do not have the right to collect indirect

taxes. Technically, it does not appear that that means we would not be able to participate; it involves us defining a base at retail. Let me put it this way: It appears as though legally we could introduce a tax like that and it would involve a certain amount of complex language and a very careful targeting of what we want to do, but it is possible that in the end you would have what amounts to, for you and me in our normal day-to-day lives, just a joint value added system. There are a lot of technical words that would go in statutes on both sides that would dovetail the two of them together, but it is something that appears to be doable, at least at first glance.

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Mr. Chairman: Maybe no one would challenge it, since we would be in a deal with the federal government.

I see Mr. Partington's hand and I see Mr. Ferraro's hand. Before I recognize you, I should announce that the Supreme Court of Canada has declared Bill 30 constitutional.

Mr. Partington: I have just a short question. You mentioned a $2-billion federal cut in personal income tax. What percentage is that of their total PIT revenues?

Mr. Sweeting: They get about $40 billion, more than $40 billion nationally, on personal income tax.

While I think of it, let me jump back to the constitutional question. It is something that we are looking at fairly carefully, and I have been told by the lawyers to understand that it is not just what we think we achieve by passing a law, it is what the courts interpret the intent to be. So it is quite possible that it would be challenged. That is not something that one would assume would not happen.

Where that goes is-- I am not really competent to answer whether it would sustain that kind of thing, but it appears as though we can take the next step, which is to talk to the federal government about the system that we would put in place in order to have a joint national arrangement.

Mr. Ferraro: I have two questions. The small business exemption on capital gains, which I think is great, is based on the federal definition of small business, I assume, which is $2 million in gross sales annually.

Mr. Sweeting: Offhand I do not know that, but I am betting you do.

Mr. Ferraro: Pardon me?

Mr. Sweeting: I said, I do not know that, but I will bet you do know that.

Mr. Ferraro: Yes. that is what it is, and the provinces distinguish to some degree. My question, though, if you assume that is a correct definition, is: Will this exemption not in fact have a propensity to create more corporations?

Mr. Sweeting: Sure. I mean, it is--

Mr. Ferraro: --an exemption (inaudible) after all the bucks, and I am growing and growing and I am going to put something in my brother-in-law's name and--

Mr. Sweeting: Sure, it is going to encourage incorporation of small businesses. I am sure it will encourage, possibly, some interesting attempts at defining $2 million at the margin. Any time a line is drawn in the tax act, there are certain events that follow from that.

Mr. Ferraro: Yes, but there are--

Mr. Sweeting: I think you are quite right: There will be an incentive, relatively speaking, to be a small family business as opposed to a different kind of business, and certainly there will be an interest in keeping the size of your business--

Mr. Ferraro: I guess they will grab it from registration fees and lawyers' incomes, then.

Mr. Sweeting: Perhaps the broad-based sales tax will pick up a portion of those lawyers' fees.

Mr. Ferraro: I am sure it will.

Mr. Chairman: Tax on MPPs' salaries.

Are there any other questions?

Mr. Haggerty: Yes, I have just one question. I am just looking at the impacts on provincial government revenues, and they are using the example for the province of Quebec here. For example, it says the provincial personal income tax revenues in a province other than Quebec will be reduced by about $880 million. Were Quebec to provide the reductions on personal income tax as the equivalent to about 80 per cent of reduction, the basic federal tax on Quebec residents, total provincial personal income tax revenues, would be reduced by $1.275 million.

Now if I interpret that, it means that if Quebec were to reduce its personal income tax and then go to the sales tax approach to collect taxes, the people in Ontario would be picking up a bigger share of the cost of funding in transfer payments to different provinces. Would I not interpret that correctly then? Because we in the province of Ontario are the largest consumers. If they were to lose that $1.275 million, if they reduced their personal income tax, and you apply everything to that sales tax approach across the board, it means that Ontario would be subsidizing perhaps more than we should.

Mr. Sweeting: Whatever happens in Quebec, and Quebec is--

Mr. Haggerty: Is separate.

Mr. Sweeting: --a different situation because it has its own PIT--

Mr. Haggerty: That is right.

Mr. Sweeting: --it really does not affect the provinces. The numbers that you are referring to have to do with what will happen to the provincial portion of the personal income tax, assuming that Quebec does or does not participate or make the same kind of changes the feds do. How they find that extra $475 million that is referred to in those numbers really would have no particular impact on Ontario. We do not pay Quebec income taxes.

Mr. Haggerty: Why would they not through the established programs financing?

Mr. Sweeting: The EPF has to do with the basic yield of the system. There should be an EPF effect to some extent. It is really not a question that I would be--federal transfers are not my forte by any stretch of the imagination. I am not sure. I guess the information you have does not have a table. It is probably something we could look at at a later date and give you maybe some sense of.

Mr. Haggerty: Suppose it did happen in Quebec, though. They would still be looking for the federal government and the transfer payments to them and saying: "All right, we have gone this far. Now we have lowered it here, but we need more help from the federal government on transfers." I am thinking of the Edmonton commitment, for example.

All we see here is that the commitment is to the province, but it does not say if any of it is going to be passing on down to the local municipalities. That is where the retail sales tax originated here in Ontario. At one time the municipalities used to have that, and then it went across the board. Now the federal government is applying the same thing again, and that means there are going to be additional revenues in that particular area. It means funding that could come back to the provinces.

Mr. Sweeting: If you look at table 5.3 in the white paper, it appears to indicate that if Quebec were to participate in the same fashion, using the assumption that Quebec is 80 per cent of what the feds do, indeed there would be an EPF and an equalization effect as a result of that, which would then mean the feds have to find a little more money than they would have otherwise.

Mr. Haggerty: They are going to get it through the sales tax. As the province of Ontario, we will be picking up the biggest share of that cost.

Mr. Sweeting: That is certainly one way they could find that money.

Mr. Haggerty: Yes, as I say.

Mr. Chairman: There is a quote from the press, an Ontario official who said, "There is a feeling that some of this tax stuff could actually undermine a free trade deal." I am wondering to what extent the ministry is looking at how this affects a deal or how a deal affects tax reform, one or the other, and particularly perhaps how branch plants in this province would be affected.

Mr. Sweeting: It is not something my branch is looking at. It is something Treasury holds to be a fairly important aspect to tax reform. I could not comment on the degree to which it is being looked at now compared to what it will be looked at.

It is important not to pursue tax reform without recognizing that a free trade deal would have particular impacts. It has a lot to do with the assessment in the end of what sectors are winners or losers as a result of the impact on the sectors. It has to recognize the potential impacts that could be brought in from there if this assumes no free trade or that assumes free trade. It is something that I am sure will be looked at. I do not know what the elements of that review will be at this point.

Mr. Chairman: Any other questions?

Mr. Sweeting, I thank you very much. I know it was at very short notice that you prepared this. Of course, you are working on it anyway, I suppose, but in any event, we do appreciate your coming forth and giving us this overview and interpretation.

I think this is going to be a matter on which, as we delve into it further, we are going to find a lot of people who are going to feel they may well be hurt, especially as they become aware of various deductions and so on. If tax reform is really going to come about in Canada, it is going to be our job, as politicians at both levels of government, to stand firm on some of those deductions that have maybe provided unfair benefits because otherwise we are not going to be able to accomplish it.

I appreciate your help, because it has certainly explained a lot of things to me and I know it has to others as well. Thank you.

Mr. Sweeting: Thank you.

Mr. Chairman: There are a couple of other things I would like to do before we adjourn. One is that we have available here now, and we also perhaps have some time, the video the federal government has produced, which I believe is 12 minutes long, on free trade and why we really should all be in favour of it. It is part of their $12-million budget to sell free trade to Canada. Do we also have the Canadian Labour Congress video?

Clerk of the Committee: The CLC video is quite long. It is about 20 minutes.

Mr. Chairman: We also have a video prepared by the CLC, which has a slightly different perspective on the issue. Perhaps we could start and watch those now to the extent that we have time to watch them.

The other thing we should decide is--I do not know what decisions are being made this morning in the House leader's office, but presumably we should be presuming that we are sitting next week.

Mr. Morin-Strom: There is no way we would ever sit on Thursday.

Mr. Chairman: Nobody would ever sit on Thursday?

Mr. Morin-Strom: Not after a Wednesday holiday.

Mr. Chairman: All right. Do you want to sit next week? Obviously, we are not yet prepared to commence our hearings. I do not know whether we have other matters on our plate.

Mr. Morin-Strom: You will have a problem getting people in here for 10 o'clock Thursday morning after July 1, certainly the people from northern Ontario.

Mr. Chairman: All right. I am hearing words and I am seeing certain nodding of heads to the effect that unless some emergency occurs, we will not sit next week. The week after, of course, we will sit as usual, and we can start our hearings.

Mr. Morin-Strom: Yes.

Mr. Chairman: Is there anything else to discuss? Perhaps it would be wise to discontinue the Hansard while we watch the tapes.

The committee viewed an audio-visual presentation at 11:31 a.m.